

SYSTEMS APPRAISAL —PURCHASE OF PROPERTIES BY THE GOVERNMENT

PARLIAMENT LIBRARY
DIGITIZED

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**PUBLIC ACCOUNTS
COMMITTEE
1992-93**

TENTH LOK SABHA



**LOK SABHA SECRETARIAT
NEW DELHI**

FIFTY-SECOND REPORT PUBLIC ACCOUNTS COMMITTEE (1992-93)

(TENTH LOK SABHA)

SYSTEMS APPRAISAL—PURCHASE OF PROPERTIES BY THE GOVERNMENT

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**



*Presented to Lok Sabha on 30.4.1993
Laid in Rajya Sabha on 30.4.1993*

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 1993/Vaisakha, 1915 (Saka)

P.A.C. No. 1378

Price : Rs. 11.00

© 1993 BY LOK SABHA SECRETARIAT

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, Govt of India Press, Minto Road, New Delhi.

CONTENTS

	PAGE
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE	(iii)
INTRODUCTION	(v)
REPORT	1

APPENDICES

I	Paragraph 2.01 of the Report of C & AG of India for the year ended 31 March 1991 (No. 5 of 1992), Union Government (Revenue Receipts—Direct Taxes)	38
II	Statement of Observations and Recommendations.....	69

PART II*

Minutes of sittings of Public Accounts Committee (1992-93) held on 8.1.1993 and 28.4.1993.

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

THE COMMITTEE ON PUBLIC ACCOUNTS
(1992-93)

CHAIRMAN

Shri Atal Bihari Vajpayee

MEMBERS

Lok Sabha

2. Shri Girdhari Lal Bhargava
3. Shri Nirmal Kanti Chatterjee
4. Shri Z.M. Kahandole
5. Shri Vilas Muttemwar
6. Shri D.K. Naikar
- £7. Shri Arvind Netam
8. Shri Kashiram Rana
9. Shri R. Surender Reddy
10. Shri Pratap Singh
11. Shri Ramashray Prasad Singh
12. Shri N. Sundararaj
- \$*13. Shri K.V. Thangka Balu
14. Kumari Uma Bharati
15. Prof. (Dr.) Sripal Singh Yadav

Rajya Sabha

- £16. Dr. Abrar Ahmed
17. Shri R.K. Dhawan
18. Shri J.P. Javali
19. Shri Murasoli Maran
20. Shri Viren J. Shah
21. Shri Ish Dutt Yadav
22. Shri Ram Naresh Yadav

SECRETARIAT

- | | |
|----------------------|-----------------------|
| 1. Shri G.L. Batra | —Additional Secretary |
| 2. Smt. Ganga Murthy | —Deputy Secretary |
| 3. Shri K.C. Shekhar | —Under Secretary |

* Elected w.e.f. 23 July, 1992 vice Shrimati Krishna Sahi ceased to be a member of the Committee on her appointment as a Minister.

£ Ceased to be members of the Committee consequent upon their appointment as Minister w.e.f. 18 January, 1993.

\$ Ceased to be member of the Committee consequent upon his appointment as Minister w.e.f. 19 January, 1993.

INTRODUCTION

1. the Chairman of the Public Accounts Committee, as authorised by the Committee do present on their behalf this Fifty-second Report on Paragraph 2.01 of the Report of the C&AG for the year ended 31 March, 1991 (No. 5 of 1992), Union Government (Revenue Receipts—Direct Taxes) relating to Purchase of properties by the Central Government.

2. The Report of the C&AG of India for the year ended 31 March, 1991 (No. 5 of 1992), Union Government (Revenue Receipt—Direct Taxes) was laid on the Table of the House on 9 April, 1992.

3. In this Report, the Committee have observed that in order to check evasion of tax and curb proliferation of the unaccounted money, a number of anti tax evasion/avoidance measures have been undertaken by the Government from time to time by incorporating suitable provisions in the Direct Tax Laws. Legislation for this purpose has been introduced in the Direct Tax Statute from time to time starting from 1964. In Nov., 1972, Central Govt. was empowered to acquire immovable properties of value above Rs. 25,000 in respect of which consideration for the transaction was under-stated. The applicability was extended in July 1982 and for purposes of administrative convenience the monetary limit was raised to Rs. 1 lakh from June 1984. As there was substantial scope for litigation and harassment in the scheme of acquisition of immovable properties without producing commensurate results, this scheme was discontinued in relation to the transfer of properties after 30 September, 1986 and a new provision was inserted w.e.f. 1 October, 1986 conferring on the Government a preemptive right to purchase immovable properties valued at above Rs. 5 lakhs (raised to Rs. 10 lakhs under Government notification). The avowed objectives of this scheme are to counter evasion of tax through understatement of the value of immovable properties in transfer deeds and to check proliferation of black money in real estate transactions. These provisions which were initially applicable in the four metropolitan cities viz. Delhi, Bombay, Madras and Calcutta were subsequently extended to 24 other cities through notifications issued in 1987, 1989 and 1991.

4. The Committee have been concerned to find that the authorities concerned have failed to achieve better results even in the operation of the new scheme during the last six and a half years. Out of 22811 cases processed under this scheme, purchase orders were passed in 812 cases. Of these 812 cases, 430 properties with apparent consideration of Rs. 228 crores were sold, yielding a profit of only Rs. 60 crores. The Committee have been further distressed to find the negative point in respect of 79 cases in which the authorities have already paid Rs. 43 crores and the relevant properties are yet to be sold. The Finance Secretary conceded

during evidence before the Committee that it is an administrative delay and it is a question of speeding up the process. The Committee have taken a serious view of this administrative delay and emphasized that the process of disposal of purchased properties should be expedited as huge amounts of public money has been unnecessarily locked up. The Committee have also stressed the need for prescribing a statutory time limit for disposal of purchased properties under this scheme.

5. From the facts placed before the Committee, the Committee have concluded that the scheme of purchase of properties by the Central Government has failed to achieve the desired results on the following counts:

- (i) the scheme is beset with litigation despite a specific provision denying any right to appeal;
- (ii) the scheme has no safeguard against deliberate understatements in apparent consideration below the limit prescribed under law either individually or by splitting or in not filing the prescribed statement (37 I) in violation of the statute;
- (iii) there has been absence of principled selection of cases for purchase, which tended to erode the objectivity of the scheme;
- (iv) the scheme has failed to effectively tackle cases of auction sales, transfers through builders/developers etc;
- (v) absence of appropriate guidelines and procedures;
- (vi) inexcusable delay in the disposal of purchased immovable properties;
- (vii) the scheme since its inception has never been reviewed to know its effectiveness with a view to effect necessary improvements;

The Committee have taken a serious view of lack of coordinated and effective approach on the part of the Ministry of Finance in the implementation of the scheme due to which they failed to achieve and avowed objectives of countering evasion of tax through understatement of the value of immovable properties in the transfer deeds and checking the proliferation of black money. The Committee have recommended that comprehensive and effective steps should now be taken immediately in the light of their recommendations made in this Report and the recent Supreme Court judgement on the constitutional validity of the scheme to remove all the lacunae which have thus far impeded the smooth and effective functioning of the scheme.

6. The Public Accounts Committee (1992-93) examined the Audit Paragraph at their sitting held on 8 January, 1993.

7. The Committee considered and finalised this Report at their sitting held on 28 April, 1993. The Minutes of the sitting form Part II of the Report.

8. For facility of reference and convenience, the observations and 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 II to the Report.

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

10. The Committee also 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;
28 April, 1993

8 Vaisakha, 1915 (Saka)

ATAL BIHARI VAJPAYEE
Chairman,
Public Accounts Committee.

REPORT

PURCHASE OF PROPERTIES BY CENTRAL GOVERNMENT

This Report is based on Paragraph 2.01 of the Report of the C & AG for the year ended 31 March, 1991 (No. 5 of 1992), Union Government (Revenue Receipts—Direct Taxes) relating to purchase of properties by the Central Government.

Introductory

2. Tax evasion leads to generation of black money and the operation of a parallel economy. Tax avoidance which circumvents the law legally is also undesirable. The Government had been trying to combat the two evils through legislative measures and by tightening the process of enforcement machinery.

3. With a view to check evasion of tax and curb proliferation of unaccounted money, a number of anti tax avoidance/evasion measures have been taken from time to time by incorporating relevant provisions in the direct tax laws on the basis of the suggestions and recommendations of various committees and commissions appointed by the Government. Notable among these are:

(i) the provisions (1964) to book understatements in value of immovable properties in the transfer deeds to relations and associate persons and cases where the declared consideration was understated in the documents of transfer (with effect from assessment year 1964-65);

(ii) the provisions (introduced in 1964) requiring the production of a tax clearance certificate as a precondition to registration by the registering authority of documents involving property valuing over Rs. 50,000 (Rs. 2 lakhs from 1 April, 1988);

(iii) power of survey, search and seizure;

(iv) acquisition of immovable properties with fair market value exceeding Rs. 25,000 (Rs. 1 lakh from 1.6.1984) whose values were understated in transfer documents (from November 1972);

(v) Purchase of such properties by Central Government (from 1.10.1986); and

(vi) valuation of properties by an independent valuation cell.

4. In respect of transactions in real estate, legislation was introduced as early as in 1964 to subject the difference between actual consideration received and value declared in the transfer documents to capital gains tax and the differences between the market value and actual consideration for transfer to gift-tax. The Registering authority under another provision,

introduced with effect from 6 October, 1964, was not to register any document which purported to transfer, assign, limit or extinguish the right, title and interest of any person to origin any property valued at more than Rs. 50,000 (Rs. 2 lakhs from 1 April, 1988) without the production of a certificate stating that the transferer had paid all taxes or had made satisfactory arrangements for their payment. In the year 1970, Government realising the magnitude of tax evasion, appointed the Direct Taxes Enquiry Committee (popularly known as Manchoo Committee) with a view to

- (i) unearthing black money and preventing further tax evasion;
- (ii) checking avoidance of tax by legal remedies; and
- (iii) reducing the tax arrears.

5. According to this Committee widespread tax evasion was taking place by means of understatements of prices in transfer documents of immovable properties and this was attributed to the absence of a proper valuation machinery in the income Tax Department and to the department's inability to enforce the penal consequences for such understatement on the ground of honest difference of opinion. The Committee recommended incorporation of a provision in law for acquisition of properties in respect of which the consideration declared in the instrument of transfer was not truly stated or was understated as compared to the fair market value of the property on the relevant date, under certain circumstances. The legislation was accordingly amended with effect from 15 November, 1972 empowering the Central Government to acquire immovable properties of value above Rs. 25,000 (Rs. 1 lakh from June, 1984) where consideration for the transaction was understated. The applicability of these provisions was widened from July, 1982 to cover transfer of flats in co-operative societies and companies, part performance sales under the Transfer of Property Act, 1982 and long term (over 12 years) leases. Direct Taxes Laws Committee in its interim report (December, 1977) observed that these provisions had immense capacity to generate paperwork and litigation and could be patent tools of harassment and provide avenues for corruption. The long term fiscal policy announced in December 1985 also noted the large potential in litigation and harassment involved in the scheme with not so productive results. As a result, the existing scheme of acquisition of immovable properties by Government was discontinued in relation to the transfer of properties after 30 September, 1986 and a new provision was inserted w.e.f. 1.10.1986 conferring on the Government a pre-emptive right to purchase immovable properties valued at above Rs. 5 lakhs (raised to Rs. 10 lakhs under Govt. notification) in the four metropolitan cities (viz. Delhi, Bombay, Madras and Calcutta) which were offered for sale in the market at a price agreed to by the transferor.

6. The provision of Chapter XXC of the Income-Tax Act, 1961 for the scheme operative from 1 October, 1986 were introduced by the Finance Act, 1986. According to Section 269U, the provisions of Chapter XXC

shall come into force on such date as the Central Government may appoint and different dates may be appointed for different areas. The provisions apply to the cities of Bombay, Calcutta, Delhi and Madras from the beginning *i.e.* from 1 October, 1986; Bangalore and Ahmedabad from 1 October, 1987; Lucknow, Hyderabad, Cochin, Coimbatore, Bhubaneswar, Cuttack, Patna, Kanpur, Jaipur, Chandigarh, Surat, Indore, Nagpur, Pune, Madurai, Trivandrum and Bhopal from 1 June, 1989 and Faridabad, Gurgaon, Ghaziabad, Baroda and Noida from 1 April, 1991.

7. The salient features of the scheme were as under:

Section 269-UB provided that the Central Government may constitute "Appropriate Authorities" consisting of three members, two of whom shall be holding the post of Commissioner of Income-Tax or any equivalent or higher post and one shall be holding the post of Chief Engineer or any equivalent or higher post.

8. Accordingly, Seven Appropriate Authorities were constituted at Delhi, Bombay, Calcutta, Madras, Bangalore, Ahmedabad and Lucknow, having jurisdictions over 28 cities.

9. According to the provisions of section 269-UC, no transfer of any immovable property of such value exceeding Rs. 5 lakhs, as may be prescribed (the prescribed limit presently is Rs. 10 lakhs, as per Rule 48-K of the Income-Tax Rules) shall be effected except after an agreement for transfer is entered into between the transferor and the transferee at least three months before the intended date of transfer. Such an agreement must be reduced to writing in the form of a statement in the prescribed form (Form 37-I as per Rule 48-L of the Income-Tax Rules) and furnished to the Appropriate Authority within the prescribed time (fifteen days).

10. The provision of Section 269-UD empower the Appropriate Authority, for reasons to be recorded in writing, to make an order of purchase by the Central Government of any immovable property in respect of which Form 37-I has been filed at an amount equal to the amount of apparent consideration, within a period of two months from the end of the month in which form 37-I is received. Where such an order is made, the property on the date of the order, vests in the Central Government free from all encumbrances and the Appropriate Authority is entitled to make any person in possession of the property to surrender or deliver possession thereof. The provisions of Section 269-UG provide that the amount of consideration payable shall be tendered to the person entitled within a period of one month from the end of the month in which the property becomes vested in the Central Government.

11. However, if there is any dispute as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto or as to the title to receive the amount of consideration, the Central Government shall deposit with the Appropriate Authority the amount of

consideration and the final payment is made after settlement of such disputes.

12. Section 269—UH provides that if the Central Government fails to tender the amount of consideration within the specified period, the purchase order passed by the Appropriate Authority under Section 269—UD shall stand abrogated and the property shall stand reverted to the transferor.

13. The provisions of Section 269—UL(1) provide that no Registering Officer appointed under the Registration Act shall register any document purporting to transfer any immovable property for which provisions of Chapter XXC apply unless a certificate from the Appropriate Authority that it has no objection to the transfer of such property, for an amount equal to apparent consideration is furnished alongwith such document.

14. Provisions of Section 269—UN provide that an order of the Appropriate Authority shall be final and conclusive, and shall not be called in question in any proceeding under the Income-Tax Act or under any other law for the time being in force. As per Section 269—UO, Chapter XXC shall not apply where the agreement for transfer is made by a person to his relative on account of natural love and affection, if a recital to that effect is made in the agreement of transfer. As per Section 276—AB, simultaneously introduced by the Finance Act, 1986, launching of prosecution in cases of failure to comply with the provisions of Sections 269—UC, 269—UE(2) and 269—UL(2) has also been provided.

15. The scheme was initially applicable to 4 metropolitan cities of Bombay, Delhi, Calcutta and Madras with effect from 1.10.1986. Thereafter between 1.10.1987 and 1.4.1991, it was made applicable to 24 other cities. In contrast, the earlier scheme of acquisition of properties was applicable all over India. When asked to state what was the criteria adopted when the scheme was originally extended from 4 cities to another 24 cities in 1987 and the reasons for not extending it to the entire country, the Department of Revenue stated:

“The scheme of pre-emptive purchase of immovable properties was initially made applicable to 4 metropolitan cities of Bombay, Delhi, Calcutta and Madras with effect from 1.10.86. This was subsequently extended to Ahmedabad and Bangalore taking into account the transactions in real estate in those cities and chances of involvement of unaccounted income in such transactions. In the next extension of the scheme, it was made applicable to various State Capitals and important business centres. However, Capitals of Himachal Pradesh, Jammu & Kashmir and North East States were not covered. In the last extension of the scheme small towns in the neighbourhood of Delhi have been covered as transactions of real estate in those places were noticed to be quite large. The scheme has not been extended to whole country but has been restricted to specified cities where

sufficiently large number of transactions of immovable properties with consideration exceeding Rs. 10 lakhs are practically noticed to be taking place. Extension of the scheme to the entire country was also not considered on the ground that constitutional validity of the provisions was under challenge and a conscious decision was taken to wait for the Supreme Court decision before taking any steps aimed at widening the scope of the scheme or modifying it."

16. Further according to the Department of Revenue the main objectives of the scheme are to curb the proliferation of black money in real estate market and to work as deterrent against under-statement of consideration in real estate transactions. Its applicability to only 28 cities does not run counter to these objectives. It is not correct that citizens of 28 cities are in any way discriminated against *via-a-vis* those residing in areas due to restricted application of the scheme to only these cities. The scheme applies to immovable properties located in specified cities irrespective of the residence of the transferor or the transferee and the discrimination, if any, is on a national basis. Extension of the scheme to the entire country would now be examined by the Government and a decision will be taken after considering the issue in all its perspective including the additional work load to be generated by such expansion and gain to the revenue on this account.

17. The number of intimations received for the sale of properties, number of no objection certificates issued, number of purchase orders issued, number of cases in litigation, total amount spent for purchase of properties, the number of properties sold/auctioned and the amount realised through sale/auction and the amount still locked up in litigation for the period from 1.10.1986 to 31.12.1992 were as under:

No. of intimations in Form 37—I received from 1.10.1986 to 31.12.1992	22811
No. of purchase orders passed	872
No. of cases where NOC was issued	18467
Actual budget expenditure on purchase of properties from 1.10.86 to 31.12.92	273.90 crores
Actual budget receipt from sale of properties from 1.10.86 to 31.12.92	250.96 "
Amount underoveted by the Government representing difference of actual budget expenditure and budget receipts	22.94 "
No. of properties sold till 31.12.1992	469
Total No. of writ petitions as on 31.12.92	340
No. of petitions related to Challenge of Constitution validity	303

Writ petitions pending on other grounds	37
18. The period of pendency of 340 Writ Petitions was as under:	
(a) Over 3 years	117
(b) Over 2 years but below 3 years	36
(c) Over 1 year but below 2 years	69
(d) Below one year	118

Time limit for disposal of Purchased Properties

19. The provisions of the Act do not lay down any time limit for disposal of purchased property. The Committee desired to know the details of properties the sale of which was delayed beyond 3 months of purchase indicating their purchase value and time taken in sale.

In reply the Department of Revenue have stated :

“Under the provisions of Chapter XXC, the Government is required to make payment of apparent consideration within a period of one month from the end of the month in which the purchase order is passed. The order passed by the Appropriate Authority can also be rectified under Section 269-UD within six months from the end of the month in which the original purchase order was made. In a number of cases rectification applications pointing out some mistakes are filed by the concerned persons and these have to be disposed of before the property can be actually put to auction. All this exercise takes its own time with the result that it has not been possible to sell the property within a period of three months of its purchase. The Government is however taking all possible steps to minimise the time gap between the date of sale of the property and its purchase by the Appropriate Authority. Last year a special drive was launched to sell maximum number of properties which has given encouraging result and after the decision of the Supreme Court on the issue of constitutional validity, the properties under litigation will become available for sale as various writ petitions pending with High Court and Supreme Court will be expeditiously decided. An action Plan for sale of properties prescribing time limit can also be adopted after obtaining views from various Chief Commissioners who are actually doing this sale on behalf of the Government.”

20. In reply to a query the Department of Revenue have stated that the Income-tax Department disposes of properties purchased under Chapter XXC in open public auction. Such properties can be purchased by individuals, trusts, private companies, public sector undertakings, State Governments, real estate dealers or any other persons by attending the auction and making the highest bid. The properties sold in the last four years in major cities have been actually purchased by all categories of persons.

Objectives of the Scheme

21. The main objectives of the scheme are:

- i) to curb the proliferation of black money in real estate market; and
- ii) to work as a deterrent against understatements of consideration in real estate transactions.

22. The scheme envisages enforcement of true and full declaration of consideration received in real estate transactions and curbing evasion of Income Tax, Wealth Tax and Gift-Tax.

23. According to the Department of Revenue the objectives of the scheme to counter evasion of tax through under-statement of the value of the immovable properties in transfer deeds and checking proliferation of black money in real estate transactions have been achieved by the operation of the scheme. Its operation has resulted in sharp rise in the land prices in various places which cannot be wholly attributed to be normal inflationary rise. Similarly, its working has resulted in sharp rise in the stamp duty collections for State Governments which also is a factor indicating its success. After plugging certain loopholes in its working the scheme will become much more effective. This scheme has so far been the best scheme ever attempted to counter evasion of tax through real estate transactions.

24. Explaining the position further in this regard the Finance Secretary stated during evidence:

"If I can give some broad numbers, under the previous Chapter XXA, even though we had examined as many as one and half lakh cases, ultimately 7,300 cases only were considered ripe for passing final orders. Even there we are able to issue final orders in the case of 91 and we ended up acquiring only in 15 cases. Fifteen properties were acquired with a total value of Rs. 35 lakhs. *Prima facie* I would like to conclude that the litigation process was so complicated, that was why they could not take action. On the other hand, if I take the implementation under the revised procedure two sets of figures are relevant. One is, we have passed orders in about 812 cases in a shorter time; the relation to what we have done in the previous 10 years, it is indefinitely substantially more. The second point is that in about 430 cases, we have sold the properties and the sale value was Rs. 228 crores. In these cases we have made a profit of Rs. 60 crores. The minus point in the implementation of these cases is that there are implementation of 79 cases where we have paid Rs. 43 crores and we have not yet sold. It is an administrative delay and it is a question of speeding up the process. We are hopeful of doing it by the end of March."

25. The Committee desired to know, as to why it was considered necessary to replace the earlier scheme of acquisition of properties, which also sought to serve the same purpose. In reply, the Department of

Revenue stated in a note that the earlier scheme of acquisition of immovable properties, as framed under Chapter XXA of the Income-Tax Act, 1961 empowered the Government to acquire an immovable property on its sale or transfer if the consideration recorded in the transfer deed was found to be less than its fair market value by more than 15% of such apparent consideration. The provisions of Chapter XXA placed onerous burden upon the Competent Authority to establish that the consideration for transfer had not been truly stated with a view to evade taxes. As a measure for countering evasion, the provisions of Chapter XXA did not prove to be effective and generated a great deal of litigation. It was, therefore, considered essential in the long-term Fiscal Policy, announced by the Government in December, 1985, to find ways in which tax payers could be induced to disclose the true value of their properties in the agreement for transfer. The new provisions have thus done away with the elaborate procedure of initiation of acquisition proceedings and the onerous burden of proof required under the old scheme of acquisition of properties under Chapter XXA.

26. The Committee enquired that if that scheme was embroiled in litigation, how this was an improvement over the earlier scheme of acquisition of properties, which was also bogged down by revenue litigation. In reply, the Department of Revenue have stated *inter alia* in a note as under:

“It is admitted that a large number of cases of pre-emptive purchases are involved in litigation. Such litigation is largely due to the challenge to the constitutional validity of Chapter XXC. After the judgement of the Supreme Court deciding the question of constitutional validity, it is expected the stalemate will be over and the litigation will be drastically reduced.

Under the old scheme of Chapter XXA, where a Competent Authority has reasons to believe that exceeding one hundred thousand rupees has been transferred by a person to another person for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of evading taxes, the Competent Authority could initiate proceedings for the acquisition of such property. Under the new scheme of Chapter XXC there is no elaborate procedure for initiating acquisition proceedings through Gazette notification. The material difference in the 2 schemes is that under the earlier provisions, the property was compulsorily acquired by the Central Government after a particular transaction had already taken place and had the effect of divesting the owner of his rights in the property. Under the new provisions the Government steps in pre-emptively even before the completion of transaction and thus it does not divest the transferee of any rights in the property.

The discharge of this onus under the old scheme, amounted to proving that the real consideration for transfer was more than the apparent consideration which in practice is, by the nature of things, difficult to establish and it generated large scale litigation. Under the new scheme of Chapter XXC, there is no such burden placed on the Department.

The old scheme envisaged determination of fair market value of the property. Such determination by the competent authority was subject to litigation before the ITAT and the High Courts resulting in delay in finalisation of acquisition proceedings. The new scheme of Chapter XXC does not have any such requirement of determination of fair market value.

The Chapter XXC is an improvement over Chapter XXA as can be seen from the fact that 382 properties were not only purchased but also re-sold in public auctions in a short period of 5½ years and the Government realised Rs. 48.31 crores more than the amount paid for purchase of the properties.

In contrast, only 86 properties could be acquired all over India under the old Chapter XXA, during the 18 year period (14.11.1972 to 31.3.1991)".

27. As pointed out earlier as many as 340 out of 872 cases of purchase as on 31.12.1992 remain under litigation. Apart from writ petitions on account of constitutional validity of the provision of the scheme (303 cases) there were cases (37) of litigation on other grounds as well. Audit Para points out that in some cases the orders of the competent authorities have been challenged on grounds including procedural, such as lack of show cause notice, order without stating reasons etc. To illustrate, in two cases of Uttar Pradesh, the transferors filed writ petitions and stalled further action by the appropriate authority, in one due to the purchase order having been passed without giving show cause notice or hearing the parties and in the other, due to the purchase order having failed to mention specific reasons. In this connection the Department of Revenue have stated that as per law there is no requirement of giving an opportunity of being heard. Similarly, the specific reasons for passing purchase order, though to be recorded in noting, are not required to be communicated."

28. The Committee enquired as to why the Government has found itself helpless to avoid litigation on ground other than that of constitutional validity or to have such cases settled expeditiously. In reply, the Department of Revenue stated that in almost all cases of litigation, constitutional validity of the provisions was under challenge and, therefore, it was considered prudent to wait for the decision of the Supreme Court in the case of C.B. Gautam before taking any steps of modifying/ extending the scheme. As the Supreme Court has now upheld the

validity, Government would now examine various legal and administrative steps to be taken to make the scheme more effective in the light of:

- a) experience of last five years;
- b) experience now being gained in applying the Supreme Court judgement in respect of cases where writs were pending and which are now being remanded to Appropriate Authorities.

29. In this connection, the Finance Secretary stated during evidence:

"The judgement of the Supreme Court was given on 17th of November, and they said the clock starts from then to complete action within two months. Wherever the court gives a decision, action must be completed within two months. If you look at the judgement sir, it says that opportunity should be given to the party and also that it should be in writing. Previously, whatever the reasons recorded were not communicated. The moment the reasons are communicated, it can be questioned in a court of law. The apprehension that we have is that in effect we may end up where we were before this new Act came. But we would not like to pre-judge the issue. We have asked our field officers to see through all the cases that they have, not only cases under litigation under Para 2.01 speedy disposal so that we are able to take a view of what are all the amendments we should make....

Another thing is, there have been a number of loopholes noticed. People sub-dividing it and selling deliberately apart for less than Rs. 10 lakhs etc. These are the loopholes. Previously as the main issue was pending in courts, we did not consider it prudent to move for amendments. Now we will have to incorporate these safeguards also."

30. When enquired about the significance of two months time, the Chairman, CBDT explained:

"The Supreme Court has stated that the parties must be given a hearing. Then, they have said that on the basis of whatever the party places before the appropriate authorities, however, an enquiry has to be made however summary it may be and then order is to be passed. This may perhaps require, under the present scheme, the appropriate authority to pass either a no objection order or an order acquiring the property within two months from the end of the month in which the applications are received. We are waiting for a feedback from our Units to see whether all these could be complied with within the period of two months."

31. The Committee enquired whether the Government would have to give show cause notice to the parties in all the cases pending in litigation. The Chairman, CBDT stated:

"We went back to the Court for decision. The Court has passed another order in which they have given two directions in respect of all the cases which are now in the court. When the court passes an order and on the basis of the Supreme Court decision, my time starts

as if the application is filed on that day. In all cases, I have to give them a hearing and comply with the Supreme Court decision. In respect of cases where the applications were pending, a no objection order or acquisition order is required. The Supreme Court has said that from 17th of November, 1992, there will be a fresh time of two months from the end of that month. I have to give them a hearing and follow the procedure."

Follow up of the Supreme Court Judgement

32. The Supreme Court in the case of C.B. Gautam has laid down following procedure to be followed by the Appropriate Authorities before passing of the purchase order:

- (i) The Appropriate Authorities shall give an opportunity of being heard to all the concerned parties;
- (ii) The Appropriate Authorities can draw a presumption of tax evasion if it is of the opinion that the fair market value of the property is more than 115% of the apparent consideration.
- (iii) The parties to the transaction should be allowed opportunity to rebut the above presumption which rebuttal may be either by establishing the market value to be same as the fair market value or by admitting the difference but claiming it to be for bonafide reasons.
- (iv) After receipt of the explanation of the parties to the transaction, the Appropriate Authorities shall make summary enquiries and take a decision regarding passing of the purchase order or issue of the No Objection Certificate.
- (v) The property on passing of the purchase order shall vest in the Central Government alongwith the encumbrances which may be subsisting on the date of the passing of the purchase order. This implies that encumbrances of bonafide tenancy will continue to exist even after passing of the purchase order.
- (vi) The Appropriate Authorities on passing of the purchase order shall communicate the reasons recorded for passing the order to the concerned parties.
- (vii) If the agreement to transfer, provides for handing over of the vacant possession of the property free from all encumbrances, it will vest in the Central Government free from all encumbrances and the holders of encumbrances in such cases may have to obtain their compensation from the amount determined as payable by the appropriate Authorities to the transferors.
- (viii) If the agreement to transfer does not provide for a vacant possession or the determination of monthly tenancy, such tenancy would continue even after passing of the purchase order by the appropriate Authorities but such tenants would lose the protection given to them under the Rent Protection Law as such laws are not made applicable to the properties owned by the Central Government with the result that their tenancy could be terminated by the Central Government.

- (ix) If any bogus encumbrances or bogus lease is artificially created to obstruct the pre-emptive purchase of the property such bogus encumbrances or the lease can be taken as of no legal effect and will in no way affect the rights of the Central Government.

33. Explaining as to how far the judgement has effected the existing provisions of the scheme, the Department of Revenue have stated in a note as under :

“Under the provisions of Chapter XXC, the Central Government before receipt of the Supreme Court decision was of the view that no opportunity of being heard is to be granted to any person before passing of the purchase order. However, the Supreme Court has now read into the provisions of the Act the requirement of giving this opportunity of being heard. This directions of the Supreme Court is now being complied by the Appropriate Authorities and so far no practical difficulties have been noticed in complying with this requirement.

Since the Appropriate Authorities even before receipt of the Supreme Court decision were exercising the right of purchase only in cases involving substantial difference in the fair market value and the apparent consideration, directions of the Supreme Court on this point are also not likely to create any major problem for the Appropriate Authorities. One of the Members of the Appropriate Authorities is Chief Engineer taken on deputation from CPWD and is expert in the valuation of immovable properties. The Appropriate Authorities is also assisted by the officers of the Valuation Wing in arriving at an estimate of the fair market value. The Government in view of the Supreme Court decision now proposes to strengthen the valuation set-up attached with the Appropriate Authorities which may be the only administrative change necessitate by the Supreme Court decision.

Regarding encumbrances, guidelines already exist for not passing the purchase order in cases of bonafide tenancy of long standing unless gross under-valuation is noticed. In cases where any property with bonafide tenancy or lease is purchased by the Appropriate Authority after noticing the gross under-valuation, the Government proposes to dispose of such property alongwith the tenants on ‘as is where is basis’. The view taken by the Supreme Court on this point is not likely to create any major problem for the Department. On the other hand, it will have the effect of reducing the litigation as the Government may not take any steps for eviction of bonafide tenants.

Since the Appropriate Authorities have always recorded reasons for purchase of any property, the directions of the Supreme

Court to indicate such reasons recorded to the concerned parties will also not create any problem for the Appropriate Authorities.

The Government proposes to make suitable amendments in the provisions of Chapter XXC so as to incorporate the view of the Supreme Court in the provisions of the Act itself. Similarly, some further amendments may be necessary to make the scheme more effective by plugging of various loopholes."

34. In a note furnished subsequently to the Committee the Deptt. of Revenue have stated that in order to give legislative shape to the ruling of the Supreme Court, some amendments in the provisions of the Chapter XXC have been proposed in the Finance Bill, 1993, introduced in Lok Sabha on February 27, 1993. It contains:

- (i) Proposal for enabling a reasonable opportunity of being heard to the affected parties.
- (ii) The time limit for passing the order is proposed to be extended from two months to three months, from the end of the month in which Form No. 37-I is filed. The intending transferor and transferee will now be required to enter into an agreement for sale in writing at least four months before the intended date of transfer. Where any matter relating to the property is pending in any court for decision, the period of three months for passing the order will be reckoned from the date of the final disposal of such pending matter or, where a stay order has been issued by such court, with reference to the date of vacation of the stay order.
- (iii) It is proposed that the appropriate authority shall give the grounds for making pre-emptive purchase in the order itself.
- (iv) The words "free from all encumbrances" are proposed to be deleted from sub-section(1) of, section 269UE. This would mean that in case of pre-emptive purchase, the Central Government will acquire the property in the position in which it is intended to be transferred.
- (v) It is also proposed to give a right to the appropriate authority to declare any encumbrance or lease hold interest to be void where it has been created with a view to defeating the purpose of this Chapter. In such cases, the property will vest in the Central Government, free from such encumbrance or lease hold interest. The holder of a bonafide lease or encumbrance can continue to remain in possession of the property if, in terms of the agreement for transfer, he is eligible to continue to be in possession of such property even after the transfer.

35. Regarding monthly tenancies it has been held by Supreme Court that if the agreement to sell does not provide for vacant possession or the determination of monthly tenancies such monthly tenancies would continue

even after an order for purchase by Central Government has been made by the Appropriate Authority but such tenants would lose the protection given to tenants under the rent protection laws because such laws are not made applicable to properties owned by the Central Government with the result that their tenancies could be terminated by the Central Government.

36. Explaining the position further in this regard the Finance Secretary stated during evidence:

“We will have to look at it from the legal angle. I can make one safe guess. The Government will have to sell the building again with the same tenants. I think it is going to be extremely difficult for the Government. I do not think that it is a feasible proposition.”

37. In this connection the Department of Revenue have stated that this legal position explained by the Supreme Court is not likely to make any difference to the Department as instructions already exist that purchase of a property with bonafide tenants should ordinarily be avoided unless the apparent consideration is found to be grossly under-stated. Even in such cases where a property is purchased with a bonafide monthly tenant, the Government will not get any right of taking law in its own hand and throwing away the tenants on street. The Government will have to take action under the Public Premises (Eviction of unauthorised occupants) Act, 1971 where it can get the vacant possession if the property is required for a public purpose. However, since the properties purchased under Chapter XXC are to be disposed of by holding of public auction, it may not be necessary to follow this procedure and Government can always sell the properties alongwith such bonafide tenants on ‘as is where is basis’.

38. The Committee pointed out that after the Supreme Court judgement the administrative work would tremendously increase with consequent increased requirement of staff and establishment expenditure and desired to know whether this law would at all be needed. To this, the Finance Secretary explained:

“One reason for the black-money is, of course, the excessive tax rates which we had. We are trying to reduce the tax rates and increase compliance. In Income-tax, we reduced the personal tax rates last year. It is too early for me to say whether it is the result of that only. It is too early to say whether this nearly 70% increase in collections in the current year are due to the reduction of tax rates and removal of exemptions. One other reason could be the excessively high stamp duty charges that the State Government levies. In the foreseeable future, I would like to have a situation which makes people declare a higher value properties. I am not saying that I should go in for purchase of far too many properties. I am happy that only 800 properties were got purchased during the last six years. But I have seen that in 96% cases where we give no objection certificate property value stated was quite high. In those cases, we find that the

State Government have realised large stamp revenue. I would therefore like to continue with this provision even if it requires more time-consuming court procedures. Not that I would acquire all these properties, but I should at least have the power to acquire those cases where I find that there is flagrant under statement in the value of the property. If there is any gross under-valuation, the Department of Income-tax should have the power to act. It is not my desire that I should, besides being a revenue collecting authority, be also an enforcing authority. In the immediate future, I would like to continue with such improvements as far as possible but the emphasis will be to see and act wherever gross under-valuation is noticed."

Cost on Appropriate Authority

39. The Committee desired to know the annual cost incurred on the Appropriate Authorities, In reply, the Deptt. of Finance have stated that:

"Separate details are not maintained in respect of the expenditure on salaries etc. of the Appropriate Authorities. Hence, it may not be possible to segregate the expenditure on Appropriate Authorities from the expenditure as a whole of the Income-tax Department. The expenditure is being borne within the budget allocated to Chief Commissioner of Income-tax incharge of Appropriate Authorities and is spent under various heads like, salary, TA/DA, allowance conveyance, maintenance of properties, expenditure on auctions, advertisement for auctions, etc. It is estimated that such expenditure in respect of all the seven Appropriate Authorities is approximately Rs. 1.5 crores per annum."

40. The Deptt. of Revenue have added that:

"the impact of the provisions of Chapter XXC cannot be judged merely by comparing the profit earned by the Government in sale of properties purchased under this scheme and the cost incurred on the Appropriate Authorities. The object of the provisions of Chapter XXC is to induce the transferors and transferees to disclose the real consideration in the transaction of immovable property. Such disclosures of higher consideration so results in reduction of black money and realisation of higher Capital gains tax, Wealth-tax and Gift-tax and also increased Stamp duty for the State Governments."

41. The statistical data compiled by Audit, reveals that there is wide disparity in the work load with different Appropriate Authorities. The Committee enquired about the steps taken by the Ministry with a view to removing this disparity. The Deptt. of Revenue stated in a note:

"At present 7 Appropriate Authorities have been constituted having jurisdiction over 28 different cities throughout India. These have been located and given jurisdiction in a particular geographical region of the country and this has resulted in disparity in the work load with

some of the Appropriate Authorities. With a view to remove this disparity, the jurisdiction of Appropriate Authority Bombay has been modified. It is having jurisdiction over Bombay City only after jurisdiction over Pune and Nagpur has been transferred to, Appropriate Authority, Ahmedabad with effect from 1.2.1992. This step has been taken to reduce the workload of Appropriate Authority, Bombay. However any large-scale change in the jurisdiction to remove disparity in the workload is not possible as the Appropriate Authority should be located near the places where it has got jurisdiction. The Members of the Appropriate Authority undertake physical inspection of the property before passing of the purchase order and if their headquarters are situated at a far off place, it will become difficult for them to physically inspect the property. Due to this reason an attempt has been made to locate the Appropriate Authority and give jurisdiction in the nearby cities which has resulted in some disparity in their workload. However, the Commissioners working as members of the Appropriate Authority at places where there is comparatively less workload are at times given other work also so that they are not under-utilised."

42. In reply to a query, the Deptt. have stated that:

"the Ministry is getting information regarding functioning of the Appropriate Authorities, number of purchase orders passed and number of No Objection Certificates issued on a monthly basis. However, no regular review of the functioning of the Appropriate Authorities has been made by the Ministry."

Revenue of the operations of the Scheme

43. Although more than 5 years have elapsed since the scheme came into being the Ministry have not evolved detailed guidelines to regulate the scheme nor undertaken a review of its operations/efficacy. On being asked during evidence about the concrete steps taken in this regard, the Finance Secretary stated:

"I find that we have issued a comprehensive set of guidelines running to 15 pages that these are do's and non'ts. From time to time, even in discussions and conferences, instructions are issued down the line to everyone. We have a series of instruction issued from time to time. We will make copies of these available. Your basic question is whether things are published for public consumption. These are departmental instructions only."

44. When pointed out that there was a difference between guidelines and the departmental instructions, the witness stated:

"I do not think, there is any comprehensive guidelines."

45. The position has been elucidated by the Deptt. of Revenue in a note as follows:—

“The provisions of Chapter XXC are being administered by 3 Members of the Appropriate Authority. 2 Members are of the rank of Commissioner of Income-tax and the third Member is of the rank of Chief Engineer to the Central Government. It has not been considered necessary to prescribe various registers containing proformas for keeping a watch over the statutory functions performed by the Appropriate Authority. Strict time limit has laid down in the Income-tax Act for taking decision to purchase the property, issue of No Objection Certificate and for making payment of the apparent consideration. Therefore, it has not been considered necessary to prescribe any further guidelines for regulating the scheme.

However, broad guidelines under which the Appropriate Authority should function have been decided in a meeting of the Appropriate Authority on 17th and 18th October, 1986 and these are being followed. As per these guidelines the Appropriate Authority is to take into consideration the objects of Chapter XXC for deciding the cases where purchase orders are to be passed. However, ordinarily in the following types of cases, the Appropriate Authority has been advised not to pass purchase orders.

- (a) Cases of doubtful or disputed titles.
- (b) Transactions by and with Government, semi-Government organisations, public sector undertakings, universities etc.
- (c) Properties with bonafide tenancies of long-standing.
- (d) Properties with too many restrictions on users.”

Cases of lease/sub-lease power of attorney, tenanted properties and agreement with developers/builders

46. The Audit para points out that cases of transfers by way of lease/sub-lease or power of attorney, of industrial undertakings as going concerns, by agreement between land owners and developers/builders for construction of complexes on plots etc. have generally proved somewhat difficult. Often, some of the conditions of the agreements deterred the concerned appropriate authorities from interfering in the transactions. The same happened in respect of tenanted properties and also where owners had entered into agreements with developers/promoters of apartment buildings, the main features of which are:

- (i) The owner retains certain percentage of interest in the undivided share of land.
- (ii) The developer acquires the right to exploit the entire land for construction of high rise buildings.
- (iii) The owner is obliged to transfer the interest in the undivided share of the land surrendered by him, to the developer or his nominees

either in full or in piecemeal at a future date (s) as required by the developer.

(iv) Consequent upon the surrender of certain percentage of right in the undivided share of the land, the transferor receives as consideration:

- (a) Cash which is considerably less as compared to the consideration.
- (b) specified built up area on the structure to be put up by the developer with covered car sheds, etc.
- (c) refundable caution money deposit.

Some of the agreements to transfer do not contain the value of the built up area exchange for the land. And these "Agreements to transfer" are usually not registered in the offices of the concerned sub-registrars.

47. Many cases came to notice where transactions of the nature stated above did not come up before the appropriate authorities, or where the Appropriate Authority felt constrained by the conditionalities involved. Sub-para 2.01.12 brings out several such cases. The Deptt. of Revenue have stated that issue involving such cases was not considered as the constitutional validity of the Chapter XXC was pending before the Supreme Court. Amendments were not advised at that stage by the Ministry of Law. These points would not be given due consideration by Government.

48. The Committee pointed out that these problems were related more to every day working of the Appropriate Authorities and were not entirely related to the constitutional validity of the provision. They enquired as to why the Ministry did not consider the matter serious enough and issued appropriate guidelines on the subject. In reply, the Deptt. of Revenue have stated that in the guidelines to the Appropriate Authorities it was stated that purchase orders should not ordinarily be passed in respect of properties with bonafide tenancy of long standing or having too many restrictions on user. In view of these guidelines, the Appropriate Authorities have avoided passing of purchase orders in cases involving lease, sub-lease unless the apparent consideration has been noticed to be grossly under-stated. To cover up cases of power of attorney under the scheme, an amendment in the law is considered necessary as the power of attorney executed generally does not mention the apparent consideration and is also not required to be registered. The Government was, however, advised against making any such amendment until the issue of constitutional validity was decided by the Supreme Court. Similarly, in cases of agreements with developers and builders the Government possibly cannot step into the shoes of builders or the developers and due to difficulty in practical implementation of the scheme in such cases, passing of purchase orders has been generally avoided. There have, however, been a few cases where purchases have been made even in such cases.

No action in delayed submission of Form 37-I

49. According to the provisions of Section 269UC, no transfer of any immovable property of such value exceeding Rs. 5 lakhs, as may be prescribed (the prescribed limit presently is Rs. 10 lakhs, as per Rule 48-K of the Income-tax Rules) shall be effected except after an agreement for transfer is entered into between the transferor and the transferee at least three months before the intended date of transfer. Such an agreement must be reduced to writing in the form of a statement in the prescribed form (Form 37-I as per Rule 48-L of the Income-Tax Rules) and furnished to the Appropriate Authority within the prescribed time (fifteen days). Failure makes the parties liable to rigorous imprisonment between 6 months and 2 years and levy of fine. Test check in Madhya Pradesh, Maharashtra, Kerala, West Bengal and Gujarat circles revealed delays in 9.5.10, 104 and 32 cases ranging from 3 days to 1190 days. However, penal action was not initiated in any of these cases. In a number of cases the statutory Form 37-I was defective/incomplete Audit sub-para 2.01.13(b) brings out several such instances.

50. The Committee enquired as to how the objectives of the scheme were fulfilled by simply filing the defective/incomplete forms without any further action for getting the same rectified. In reply the Deptt. of Revenue explained the position thus:

"It is admitted that in some cases, the Appropriate Authorities were simply filing the defective/incomplete Form 37-I without any further action for getting the same rectified. The problem arose because law on this point was not clear as the Appropriate Authority took a view that after the Form 37-I was 'filed' by it, without taking any action on the ground that the Form is defective/incomplete, the concerned parties would re-submit a fresh Form 37-I after removing the defects to seek a No Objection Certificate, since without No Objection Certificate, it is not possible to effect any transfer of the immovable property covered by Chapter XXC. The Supreme Court in the case of Tanvi Trading and Credits Pvt. has held that the Appropriate Authority does not have any option of filing the Form 37-I and hence in retrospect, action of the Appropriate Authority in filing Form 37-I without passing any purchase order or issue of No Objection Certificate has been held to be invalid. However, registration of an immovable property cannot take place without issue of No Objection Certificate by the Appropriate Authority. In view of this clear provision in law, wherever Forms 37-I were filed by the Appropriate Authority, the transferors and the transferees will again have to approach the Appropriate Authority requesting for issue of No Objection Certificate in case, they want the transfer of immovable property to be registered. No review of the action taken by the Appropriate Authority in filing the Form 37-I is, therefore considered necessary and none has been done so far."

51. On being asked about the steps proposed to be taken in the light of this judgement, the Deptt. of Revenue have stated that the decision of the

Hon'ble Supreme Court has been duly communicated to all the Appropriate Authorities for their information of the correct legal position. The Appropriate Authorities are now bound by the decision of the Hon'ble Supreme Court. However, in cases where transfers are prohibited by any other enactment, the Appropriate Authority has been held to be justified in filling the Form 37-I as held by the Bombay High Court in the case of Madhukar Sundarlal Sheth V.S.K. Laul (Bombay) 198 ITR p. 594. The pending cases are to be decided by the Appropriate Authorities taking into account the interpretation of the law taken by the Hon'ble Supreme Court and various High Courts.

Selection of cases for purchase

52. According to Audit para, there is no provision in law nor any guidelines of the Board in regard to the selection of cases for purchase, except that the random sampling method would be followed. It is not clear as to (i) how the Deptt. authorities are screening the cases from the details in Form 37-I for detailed enquiry (ii) how and on what basis cases are identified for reference to the valuation cell and (iii) the basis on which purchase is decided upon in some cases. Random sampling does not seem to have been resorted to, nor has there been any attempt to establish liaison with other authorities such as the State Registration authority to identify cases where the fair market value, in the opinion of the Registration authority, was higher than the declared sale consideration.

53. The Committee desired to know as to how it was ensured that the screening of cases for detailed enquiry, on the basis of Form 37-I was being carried out properly and effectively; and correct methods had been adopted for selection of cases, for reference to the Valuation Cell.

In reply, the Deptt. of Revenue stated in a note:

"When the scheme of pre-emptive purchase was introduced, it was felt that the Appropriate Authority, would apply the recognised statistical method of random sampling for selecting cases where further screening could be made for passing a purchase order keeping in view the objective of Chapter XXC. In the Board's Circular No. 461 dated 9.7.1986 in para 37.6 it was stated that the recognised statistical method of random sampling will be applied for identifying the properties which are to be purchased for the reasons to be recorded in writing. However, it was noticed that the Appropriate Authority was in a position to make screening of all the cases of transactions coming to its notice, where Forms 37-I were filed, and hence in prescribing the modalities of this random sampling method did not arise."

54. When asked to indicate the steps involved in screening the cases to identify those fit for purchase, the Deptt. of Revenue explained the position in a detailed note as under:

"Preliminary screening of Forms 37-I received by the Appropriate

Authorities is initially taken and cases of transactions by and with Government, semi-government organisations, public sector undertakings and universities etc. are excluded. In such cases no objection certificate is issued without any scrutiny of the apparent consideration of the transaction and its reasonableness. The remaining cases are then distributed to valuation officers and Districts Valuation officers depending on the apparent consideration involved. Simultaneously the Assistant Commissioners and Deputy Commissioners in the office of the Appropriate Authority are also required to verify the title of the transferor and study the legality of the transaction. The officers in the Valuation Wing issue detailed Questionnaire in writing to the parties to the transaction calling for information on various points such as detailed plan, built up area, year of construction, permissible floor space index etc. After collecting such basic data, the officers in the Valuation Wing give a broad estimate of the value of the property on the proposed date of transaction to the members of the Appropriate Authority. The Assistant Commissioners and Deputy Commissioners also submit their report after collecting the title deed, share certificate etc. in respect of the property under consideration. The officers in the Valuation Wing before submitting their estimates with the co-operation of the transferor, also make a physical inspection of the property and note down various salient features in respect of the property.

After receipt of report from the Valuation Wing, and the Assistant Commissioner/Deputy Commissioner, the members of the Appropriate Authority make a further screening of Forms 37-I and short-list cases where the apparent consideration is found to be well below the estimate given by the officers of the Valuation Wing. In other cases, no objection certificate is issued at this stage. In such short listed cases, the property is physically inspected by the members of the Appropriate Authority to satisfy themselves and after such physical inspection and consideration of the reports, a purchase order is passed or a decision is taken to issue no objection certificate.

The above procedure was being followed by the Appropriate Authorities before receipt of the Supreme Court decision in the case of C.B. Gautam. Since the Supreme Court has made it mandatory to allow opportunity of being heard to the concerned parties, the procedure has now undergone change and opportunity of being heard is also allowed to concerned persons."

Valuation Cell

55. In reply to a question about the constitution of the Valuation Cell, the Deptt. of Revenue have informed the Committee that Valuation Cell in the Income-tax Department was created in October, 1968 on the recommendation of the Public Accounts Committee of the Parliament to assist the Officers of Income-tax Department in detecting under-valuation of Urban immovable properties. Till 31st December, 1972 the Valuation

Cell functioned in an advisory capacity in the Income-tax Deptt. The Taxation Laws (Amendment) Act, 1972 conferred statutory powers with effect from 1st January, 1973 on the Valuation Officers in the valuation cell to enable them to discharge their functions effectively.

56. Further, according to the Deptt., the administrative set up of the valuation cell consists of two Regional Valuation Officers, one at New Delhi and one at Madras, controlling Northern and Southern regions respectively. There are 12 district Valuation Officers working under these two Regional Officers. These district Valuation Officers control 12 Valuation Cells which are sub-divided into units and are manned by Valuation Officers and Assistant Valuation Officers. Each District Valuation Officer and Valuation Officer is assisted by the two Junior Engineers while an Assistant Valuation Officer is assisted by one Junior Engineer. The Regional Valuation Officers are drawn from the Central Public Works Department and are of the rank of Chief Engineer in that Department. The other officers i.e. District Valuation Officer, Valuation Officer and Assistant Valuation Officer are also generally drawn from the Central Public Works Department. These officers do not have any fixed tenure in the Valuation Cell. However, they are being exchanged with other officers in the Central Public Works Department on regular basis.

Procedure for fixation of reserve price and for auction

57. Audit Para points out that after taking vacant possession, the properties are guarded by security guards pending disposal and delivery of possession to the purchasers. Action for sale by auction is initiated through advertisements in two English and one local dailies fixing the date of inspection of the properties and the date of auction.

58. In January 1987, the Board communicated to the appropriate authorities that the reserve price should be the apparent consideration plus 15 per cent thereof. In September 1988, the Board reiterated this policy. In September 1990, the Board clarified that the limit of reserve price at 115 per cent of the apparent consideration was only the minimum limit and it was left to the discretion of the Chief Commissioners of Income-tax to fix the reserve price above 115 per cent of the apparent consideration if they considered it a fit case. Wherever reserve price was to be fixed below 115 per cent of the apparent consideration, Board's clearance was called for and the Board had emphasised that the very purpose and objective of acquiring properties under Chapter XXC would be defeated if they, had to sell the properties at a rate lower than that visualised at the time of purchase.

59. Explaining the basis for fixation of reserve price for auction of purchased properties at 115% of the apparent consideration, the Deptt. of Revenue have stated in a note that the minimum limit of 115% of the apparent consideration has been fixed in view of the guidelines prescribed for the Appropriate Authorities to consider passing of purchase order only

if the market value of the property is found to be at least 115% of the apparent consideration. Since a purchase order is to be made only if the market value is at least 115% of the apparent consideration, the same criteria has been taken for fixing the reserve price of such purchased property.

60. During the course of audit it was noticed that the reserve price for the disposal of the immovable properties was accordingly being fixed merely adding 15% of the apparent consideration. The Department thus did not rely on the fair value worked out by its Valuation Officer while fixing the reserve price though it was the basis on which purchase or otherwise was decided, nor did it take into account the element of price escalation when there was time gap in disposal of such properties.

61. When enquired as to why the price determined by the Valuation Cell was not fixed as the reserve price the Department have stated that the Appropriate Authority before passing the purchase order makes its own estimate of the market value of the property taking into account all the relevant facts such as the tenancy of the property, its location, its potential for further development and similar other relevant factors in addition to the value determined by the Valuation Cell. The fact that the Government has realised surplus of Rs. 48.31 crores in respect of 382 properties sold till 31.3.92 (the profit being approximately 33% of the purchased price) itself establishes that the purchase orders by the Appropriate Authority have been made on the basis of cogent reasons.

62. Elaborating the position further, the Department of Revenue have stated in a note thus:

"The officers in the Valuation Wing give only a broad estimate of the value of the property on the proposed date of transaction and were not determining the market value of the property after taking into account each individual factor effecting the market value. The Appropriate Authority before passing the purchase order makes a physical inspection of the property and arrives at its own estimate of market value of the property taking into account its own inspection as well as the broad estimate given by officers of the Valuation Wing. At times this estimate of the Appropriate Authority is at variance with the report given by the officers of the Valuation Wing. Considering these factors, the Board decided to issue guidelines for fixing of reserve price, at a minimum of 115% of the apparent consideration which is a determinate amount. As the property is to be sold in an open auction to the highest bidder, the reserve price so fixed acts only as a safeguard and the highest bid amount is itself supposed to be representing the market value of the property."

Lack of coordination with other authorities

63. It is seen from the Audit para that under the provisions relating to acquisition of properties as existing upto 30 Sep. 1986, the registering authority was required to furnish a fortnightly statement to the competent authority listing out the cases of transfer on sale/mortgage for apparent consideration exceeding Rs. 50,000/Rs. 1 lakh, along with copies of the instruments. This provision stands deleted from the Income-tax Act from 1 October 1986 and there is no similar provision in the Registration Act. Consequently, as at present, there is no liaison between the Income tax authorities and the State Registration authorities except that the registering officer shall not register any document of transfer of immovable property (a) without a no objection certificate from the appropriate authority if the value of the property exceeds Rs. 10 lakhs and (b) without tax clearance certificate from the Income-tax department in favour of the transferor if the value exceeds Rs. 2 lakhs. There is, thus, no cross-check with the case being registered. There is also no information with the Department in regard to the fair value, as distinct from the declared/apparent value, of the property as may have been adopted by the Registering authority for the purpose of computation of duty/fee.

64. Audit para has further pointed out that in Kerala circle, in 3 cases of transfers, one to a private party and two to Government departments, where the apparent consideration exceeded Rs. 10 lakhs each, the transfer deeds were registered without obtaining the no objection certificates from the Appropriate Authority. It is, however, not known whether in these cases Forms 37-I were filed. 8 such cases were also found registered in Calcutta circle. In Karnataka circle, nine cases of transfer of immovable properties between February 1988 and January 1990 came to notice of audit where the fair market value of the properties for stamp duty purposes, as determined by the Registration Authority of the State Govt., was in excess of Rs. 10.00 lakhs while the sale consideration shown in the agreement to sale was less than Rs. 10.00 lakhs.

65. In regard to lack of coordination with the State Registering Authorities. The Department of Revenue have stated that under section 269UL(1), no registering officer can register any document which purports to transfer an immovable property covered by the provisions of Chapter XXC of the Income-tax Act. However, there have been a few cases where certain properties have been registered without insisting on no objection certificate from the Appropriate Authorities. Whenever any such case comes to the notice of the Appropriate Authorities immediate action is initiated to ascertain the circumstances under which the property was registered without insisting on no objection certificate. In the cases cited by the Audit in para 2.01.17, it has been noticed that one of the parties to the transaction are either the Government department, public sector undertaking or a registration has been made on directions of the Court. None of the cases registered without no objection certificate have been found to be having any potential where the purchase order could have been made if

the transaction had come before the Appropriate Authority. However, all such cases have been brought to the notice of the concerned registering authorities who have been requested to be more careful in observing the provisions in law on this point.

66. The Deptt. have added that it was not considered necessary to obtain information regarding cases where the fair market value for the purposes of stamp duty was estimated by the registering authority at above Rs. 10 lakhs as the criteria for applying the provisions of Chapter XXC is apparent consideration mentioned in the agreement to transfer and if this is below Rs. 10 lakhs, the Appropriate Authority does not get any jurisdiction.

67. When enquired about the remedy apart from prosecution which the Government have if a document with apparent consideration exceeding Rs. 10 lakhs gets registered without clearance from the Appropriate Authority, even if there is gross under statement of the consideration, the Department of Revenue stated in a note thus:

"Under Section 269UL(1), the registering officer has been prohibited from registering any document in respect of properties covered by Chapter XXC without obtaining no objection certificate from the appropriate authorities. A few cases where registrations have been made without insisting on no objection certificate and brought to the notice by the Audit have been examined and it is seen in none of the cases the property had potential for being purchased by the Appropriate Authorities. Any such registration made without obtaining no objection certificate shall be in excess of the powers of the registering authority and his action in registration of the documents will therefore, be open to challenge in a court of law by the Appropriate Authorities. The court of law will have powers to cancel such registrations and issue directions for filling of Form 37-I before the Appropriate Authorities. This option is available besides launching of a prosecution against the transferor and the transferee for non-compliance with the provision of section 269UC."

68. Audit para reveals that during the year 1986-87, the Department had purchased eight properties without obtaining clearance from the Tamil Nadu Urban land Ceiling authorities and paid the apparent consideration specified in the agreements. In one case, the Department had purchased a property for an apparent consideration of Rs. 1.40 crores and sold the same for Rs. 2.60 crores in public auction. Subsequently it is pointed out by the Commissioner and Secretary to the Government of Tamil Nadu that the State Government had ordered acquisition of land measuring 686 sq. mtr. in the above property and remarked as under:

"For excess land coming under the purview of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the Income-tax

Department pays a huge price as against zonal value determined under Tamil Nadu Land (Ceiling and Regulation) Act, thereby incurring loss to Central Govt."

69. Audit para points out that thereafter a copy of the order by the appropriate authority for the purchase of immovable property was being forwarded to the concerned registering authority also with a request to specify whether the property purchased was hit by the Urban Land Ceiling Act. It was mentioned therein that in case no communication in this regard was received from the Urban Land Ceiling authorities within 15 days of service of the letter enclosing the order issued, it would be considered that the property was not hit by Tamil Nadu Urban Land Ceiling Act. The Urban Land Ceiling authorities were contesting that it would take a month for them to send a report as original documents, that too in different sections were to be verified in each case. In one case, the report was received after months of issue of purchase order. This matter has not been sorted out and as the payment towards apparent consideration would require to be made before the end of subsequent month of issue of purchase order under Section 269UD, the Income-tax Department was going ahead as per the presumption embodied in the letter to the Urban Land Ceiling authorities and in a number of cases final payment of apparent consideration was made without obtaining formal clearance.

70. Audit have commented upon 12 cases in Karnataka Circle and one case in Uttar Pradesh Circle, where clearance from Urban Land Ceiling Authority was not obtained before passing of the purchase order by the Appropriate Authority. Explaining the position in this regard the Deptt. of Finance have stated that on receipt of Form 37-I, the Appropriate Authority issues a Questionnaire to the parties to the transaction enquiring about the applicability of Urban Land Ceiling Act to the property under transfer. However, some cases have been noticed where either parties to the transaction did not indicate the applicability of Urban Land Ceiling Act or the concerned State Government authorities did not supply the information to the Appropriate Authority within the time available to it for passing of the purchase order. In such cases purchase orders were made after taking into account the apparent consideration of the property and possible applicability of Land Ceiling Act to some part of the property. However, actual experience has shown that almost in all cases where such purchase orders were made, the Urban Land Ceiling authorities have also given their clearance after a detailed consideration of the facts and such clearance is not on account of the fact that a purchase order was made by the Appropriate Authority. Unless and until an order has been passed by the Urban Land Ceiling Authority, it cannot be said with any degree of certainty that any part or any particular part of the property shall be acquired under the Land Ceiling Act. If the Appropriate Authority decides to issue no objection certificate only on the ground that the property might be acquired under the Land Ceiling Act, this will

confer an uncalled benefit on the transferor as to same property may also be ultimately granted clearance by the Urban Land Ceiling authority after taking into account complete facts of the cases.

71. The Committee desired to know the remedial steps that have been taken to enforce regular institutional/statutory arrangement for maintaining liaison with the State Government and other authorities to obviate the chances of occurrence of the cases of lack of coordination with State Registering Authorities and State Land Ceiling Authorities.

72. In reply, the Department have stated that in cities where provisions of Chapter XXC have been extended, the Appropriate Authorities and Chief Commissioners have been advised to maintain a close liaison with the State registering authorities and bring to their notice the provisions in the law regarding registration of the documents. The Appropriate Authorities on receipt of Form 37-I in respect of any property which is prima facie covered by the Urban Land Ceiling Act issue a questionnaire to the parties filling the Form 37-I and obtain information about the clearance granted by the Urban Land Ceiling authorities. Since now the statutory hearing has to be given by the Appropriate Authorities to the transferor and the transferee, it will definitely ascertain the applicability of the Urban Land Ceiling Act to the Transaction in the course of such hearing.

73. Test audit also revealed that there was hardly any co-ordination and mutual exchange of information between the various functionaries of the Income Tax Department, the registering officer and the appropriate authority. The appropriate authority did not also pass on copies of his orders on the valuation reports estimating the market values of properties under consideration for purpose to the assessing officers. The officers issuing tax clearance certificates likewise did not send copies thereof to the appropriate authority. Audit has cited (sub-para 2.01.18) certain such cases of Madhya Pradesh, Delhi and West Bengal circle. Audit para further points out that there was no operative system of liaison between the assessing authorities on the one hand and the appropriate authorities/State registration authorities/competent authorities on the other. Consequently even in respect of cases where the latter authorities had determined the fair market values at substantially higher levels than the apparent consideration, proceedings for levy of capital gains/gifts etc. tax were not initiated, 749 cases were noticed in Audit in 8 circles (Tamil Nadu, Delhi, Madhya Pradesh, Karnataka, Uttar Pradesh, Rajasthan, Bihar & Andhra Pradesh) where apparent consideration was shown as Rs. 39.59 crores only against the fair market value amounting to Rs. 66.89 crores, thus leaving a difference of Rs. 27.30 crores uncovered for tax purposes.

74. The Department of Revenue, in this connection stated that under the provisions of Section 230A of the Income-tax Act, a transaction of

immovable property involving consideration of over Rs. 2 lakhs automatically comes to the notice of the assessing officer and in certain cases the assessing officer also makes a reference to the Appropriate Authority if the property is also covered by the provisions of Chapter XXC. The Appropriate Authority in such cases supplies the information available with him. Long term action plan for survey for financial years 1990-91 to 1993-94 has duly prescribed code No. 201 requiring CIB Units to collect information available in Forms 37-I received by Appropriate Authorities on regular basis.

75. In order to check evasion of tax and curb proliferation of the unaccounted money, a number of anti-tax evasion/avoidance measures have been taken by the Government from time to time by incorporating suitable provisions in the direct tax laws. Legislation was introduced in Direct Tax statute as early as in 1964 to subject the difference between the actual consideration received and the value declared in the transfer documents to capital gains and the difference between the market value and the actual consideration for transfer to gifts tax. The Direct Taxes Enquiry Committee popularly known as Wanchoo Committee set up in 1970, recommended incorporation of a provision in law for acquisition of properties in respect of which the consideration declared in the instrument of transfer was not truly stated or was under-stated as compared to the fair market value of the property on the relevant date under certain circumstances. The legislation was accordingly amended *w.e.f.* November, 1972 empowering the Central Government to acquire immovable properties of value above Rs. 25,000 in respect of which consideration for the transaction was under-stated. The applicability of these provisions was further widened with effect from July, 1982 to cover transfer of flats in co-operative societies and companies, part performance sales under the Transfer of Property Act, 1982 and long term leases. For purposes of administrative convenience the monetary limit was raised to Rs. 1 lakh from June, 1984. Subsequently, the long term fiscal policy announced in December, 1985 noted the substantial scope for litigation and harassment in the scheme of acquisition of immovable properties without producing commensurate results. In the wake of this, the existing scheme of acquisition of immovable properties by Government was discontinued in relation to the transfer of properties after 30 September, 1986 and a new provision was inserted *w.e.f.* 1 October, 1986 conferring on the Government a pre-emptive right to purchase immovable properties valued at above Rs. 5 lakhs (raised to Rs. 10 lakhs under Government notification). The avowed objectives of this scheme are to counter evasion of tax through under statement of the value of immovable properties in transfer deeds and to check proliferation of black money in real estate transactions. These provisions which were initially applicable in the four metropolitan cities *viz.* Delhi, Bombay, Madras and Calcutta were subsequently extended to 24 other cities through notifications issued in 1987, 1989 and 1991. The provisions enabled the Government to purchase

properties already offered for sale and no solatium was payable since no compulsory acquisition was involved. The purchased properties were to vest in the Government free from all encumbrances. The Committee regret to find that as discussed in the succeeding paragraphs the scheme has by and large not been able to achieve the desired objectives.

76. The earlier scheme of acquisition of properties by Central Government was applicable to the entire country. However, the scheme of purchase of properties by Central Government which was initially introduced in 4 metropolitan cities of Bombay, Delhi, Calcutta and Madras *w.e.f.* 1.10.1986 was subsequently extended to cover 24 more cities between 1.10.1987 and 1.4.1991. The scheme is stated to have been restricted to specified cities where sufficiently large number of transactions of immovable properties with consideration exceeding Rs. 10 lakhs are practically noticed to be taking place. Extension of the scheme to the entire country was not considered by the Ministry as the constitutional validity of the provisions was under challenge in the court of law. According to the Ministry, the extension of the scheme to the entire country would now be examined and a decision to that effect would be taken in the wake of the Supreme Court judgement deciding its constitutional validity. The Committee are of the definite view that extension of the scheme only to the specified cities, on the one hand result in similar transactions outside these cities remaining beyond the scope of the scheme and on the other it tends to undermine the principle of equity under the scheme. The Committee hope that the question of extending the coverage of scheme will now be considered seriously by the Ministry.

77. The Committee further note that even in limited cities where the scheme under chapter XXC is applicable, the provisions for pre-emptive purchase are activated only where the stated consideration for the transfer of property in the agreement entered into is above Rs. 10 lakhs. There has been no move to readjust the Financial limit, having regard to the magnitude of operation of the scheme etc. and keeping in view the shift in real estate prices. Further, value has been prescribed as the apparent consideration of the relevant property. Consequently, where the stated consideration of a property is deliberately kept below the prescribed limit, the case authentically goes out of the ambit of the scheme and unfortunately no mechanism has been prescribed to detect such cases of wilfully escaping from the purview of the scheme leading to tax evasion and proliferation of black money. In the case of *Abdus Smat Haji Adaim Kantharia and others Vs. Union of India and others*, the Bombay High Court had held that auction cases would not fall within the purview of the scheme of purchase of properties as there would be no agreement between the parties in such cases. Thus the auction cases also remain outside the purview of the scheme. The Committee find that in some of these cases, statement in Form 37-I were being submitted to the Appropriate Authority who also issued no objection certificates while some did not come up at all before the Appropriate Authority. The Finance Secretary informed the Committee

during evidence that it was not considered prudent to plug a number of loopholes noticed in the scheme such as deliberately keeping the stated consideration below the prescribed limit, sub-dividing the property and selling a part for less than Rs. 10 lakhs etc. as the main issue was pending in the Supreme Court. The Committee are not convinced with this argument and since that the Supreme Court judgement has been delivered necessary steps should be initiated. The Committee recommend that suitable provisions should be made to plug these loopholes in consultation with the Ministry of Law, urgently.

78. Another disquieting feature in the working of the scheme has been the large scale litigation as a result of the implementation of the scheme under Chapter XXC. The Committee find that as on 31st December, 1992, 340 out of 872 cases in which purchase orders were passed, have ended in litigation and of these 340 petitions as many as 117 were over 3 years old. 303 writ petitions related to challenge of constitutional validity of the scheme and 37 writ petitions were pending on other grounds. The Committee are constrained to observe that the Government have found themselves helpless to avoid litigation on grounds other than that of constitutional validity or to have such cases settled expeditiously despite the provisions which make the orders of the Appropriate Authority final and conclusive, not to be questioned in any proceedings under this Act or any other laws. The Aforesaid statistics reveal that this scheme too suffers from voluminous paper work and litigation, despite having been limited in scope. The Supreme Court has now upheld the validity of the scheme. The Committee recommend that the existing scheme should be reviewed in the light of the Supreme Court judgement and the other reasons for widespared litigation with a view to take remedial steps to overcome the existing lacunae so as to minimise litigation. The Committee would like the concrete steps be taken in this regard.

79. The Supreme Court in its judgement delivered on 17.11.92 has upheld the Constitutional validity of the scheme which was challenged, *inter alia*, on the ground that it infringes the right to buy/sell property. The basic decisions of the court *inter alia* are (i) Both the intending buyer and the seller should be given the opportunity to be heard before ordering compulsory purchase (ii) reasons for making the purchase should be communicated to the affected parties (iii) The purchase made by the Government would be subject to encumbrances and lease hold interest to the extent these are not agreed to be discharged by the vender. While the clause free from encumbrances has been struck down the Supreme Court has held that monthly tenancies would continue even after an order for purchase by the Central Government has been made by the Appropriate Authority concerned but such tenants would lose the protection under the Rent Protection laws, because such laws are not made applicable to properties owned by the Central Government with the result that their tenancies could be terminated by the Central Government. Although the

judgement is to have only prospective application, the Court has directed that in respect of pending litigation cases the parties are required to be given a hearing. The Committee have been informed by the Ministry that the implementation of the Supreme Court judgement is not likely to create any problem for the Appropriate Authorities. According to the Ministry the only administrative change required is the strengthening of the valuation set up attached to the Appropriate Authorities. Further, the time limit for passing the order is proposed to be extended from two months (as directed by the Supreme Court) to three months from the end of the month in which form 37-I is filed perhaps necessitated from the practical experience gathered while handling the cases in the wake of the Supreme Court judgement. In order to give legislative shape to the ruling of the Supreme Court, some amendments in the provisions of chapter XXC have been proposed in the Finance Bill 1993. For instance, it has been proposed that the holder of a bonafide lease or encumbrance can continue to remain in possession of the property if in terms of the agreement for transfer, he is eligible to continue to be in possession of such property even after the transfer. It is pertinent to note in this regard that the Supreme Court has held that monthly tenancies if existing in the purchased property could be terminated by the Government as rent protection laws do not apply to properties owned by the Central Government. The Ministry have contended that it may not be necessary to take action under the Public Premises Act, 1971 to get the vacant possession of the property as Government can always sell the property alongwith such bonafide tenants on 'as is where is basis'. The Committee, however, feel that to sell the properties again with the same tenants may be fraught with various difficulties and necessary steps should be taken to ensure that the *bona fide* interest of the Government and the tenants are not jeopardised. The Committee also emphasize that with a view to safeguard the Government interests in the scheme, all remedial steps necessitated by the Supreme Court judgement should be taken urgently in consultation with the Ministry of Law.

80. Under Section 269 UC, the agreement for transfer of immovable property exceeding Rs. 10 lakhs between the transferer and the transferee is required to be reduced to writing in the form of a statement in the prescribed form (37-I) and furnished to the Appropriate Authority within 15 days. The Committee are unhappy to find violation of this provision, in Madhya Pradesh, Maharashtra, Kerala, West Bengal and Gujarat circles where the submission of such statements to the Appropriate Authority has been delayed by 3 to 1190 days. The Committee are surprised to find that no penal action was initiated in any of these cases even though parties were liable to rigorous imprisonment and levy of fine. The Committee would impress upon the Ministry to take effective steps to induce the parties to submit the required statements within the prescribed period of 15 days and to take penal action in all such cases where the submission of the required statement is unduly and intentionally delayed.

81. The Committee further note that the Appropriate Authority, on receipt of the statement in form 37-I is required to issue within 2 months from the month end in which the form is received either the pre-emptive purchase order or the no objection certificate on the strength of which registration of the sale deed would materialise. Audit scrutiny has revealed that the Appropriate Authority in quite a large number of cases failed to take either of the aforesaid actions simply on the ground that on scrutiny these forms were found defective or incomplete. While admitting this fact the Ministry have tried to explain the inaction by saying that this problem arose because law on this point was not clear and the Appropriate Authority took a view that after the Form 37-I was 'filed' by it, without taking any action on the ground that the Form is defective/incomplete, the concerned parties would re-submit a fresh Form after removing the defects to seek a 'No Objection Certificate', since without No Objection Certificate, transfer of the immovable property covered by Chapter XXC was not possible. This explanation is hardly convincing and it has also been reported by the decision of the Supreme Court in the case of Tanvi Trading and Credits (P) where the Court has held that the Appropriate Authority is required either to pass purchase order or to issue the no objection certificate. The Committee are unhappy over the inaction on the part of the Appropriate Authorities in all such cases. As the said decision of the Supreme Court is stated to have been communicated to all the Appropriate Authorities, the Committee hope that all the statements in Form 37-I would in future be disposed of as required under the law.

82. The Committee are also concerned to note that there has been considerable difficulty in handling cases of lease/sub-lease or power of attorney, of industrial undertakings or going concerns and of agreements for development of plots and construction of high-rise buildings. Often, some of the conditions of the agreements deterred the concerned Appropriate Authorities from interfering in the transactions. According to the Ministry, the Appropriate Authorities, as per instructions to them, have avoided passing of purchase orders in cases involving lease, sub-lease unless the apparent consideration has been noticed to grossly under-stated. Any action from legal angle in such cases was not considered as per the advice of Law Ministry since the constitutional validity of the Chapter XXC was pending before the Supreme Court. The Committee feel that these problems were not entirely related to the constitutional validity of the provisions and devising of suitable means to overcome the difficulties in such cases should have been considered much earlier and the Committee deprecate the lack of action on the part of the authorities thus far. It has now been proposed in the Finance Bill, 1993 to give a right to the Appropriate Authority to declare any encumbrance or lease hold interest to be void where it has been created with a view to defeating the purpose of this chapter. The Committee hope that with this amendment, the Appropriate Authority would not feel constrained to act in the aforesaid cases. The Committee also expect the

Ministry to examine the feasibility of amending the existing law to bring in the ambit of the scheme the case of power of attorney as the power of attorney executed generally does not mention the apparent consideration and is also not required to be registered.

83. The Committee are also concerned to note that there have been quite a few cases where certain proposals covered by Chapter XXC have been registered by the Registering Authorities even without the production of a No Objection Certificate from the Appropriate Authorities inspite of the fact that production of the no objection certificate is a legal pre-condition for such registration. The Committee are surprised over the justification for this wrong action adduced by the Ministry that none of these cases have been found to be having any potential where the purchase order could have been made if the transaction had come before the Appropriate Authority. They are of the opinion that the action taken by the Ministry in requesting the concerned Registration Authorities to be more careful in this regard would not suffice. There ought to be some legal provision or in built mechanism to ensure that the statements in Form 37-I are filed without fail in all liable cases and no property covered by Chapter XXC is registered without a No Objection Certificate from the Appropriate Authority. The Committee would also like the Department to examine the feasibility of making it mandatory for the Registration Authority to furnish a fortnightly statement to the Appropriate Authority listing out the cases of transfer for apparent consideration exceeding Rs. 10 lakhs so that cases being registered could be cross checked at their end by the Appropriate Authority. The Committee would like to be apprised of the concrete steps taken in this regard.

84. The Committee are informed that for auction of purchased properties the reserve price is to be the apparent consideration plus 15 per cent thereof. This criteria is stated to have been fixed as the purchase order is to be made only if the market value is at least 115 per cent of the apparent consideration. Although the Board has clarified that the limit of the reserve price at 115 per cent of the apparent consideration was only the minimum limit and it was left to the discretion of the Chief Commissioners of Income Tax to fix the reserve price above 115 per cent of the apparent consideration if they considered it a fit case, audit scrutiny has revealed that the reserve price was invariably being fixed by merely adding 15 per cent of the apparent consideration. Even though the properties are sold in open auction, the Committee feel that the fixation of reserve price usually at the minimum prescribed limit is likely to be taken advantage of by auctioneers by forming cartels etc. It is, therefore, deemed imperative that the reserve price fixed should be reasonable so as to discourage the possibility of indulging in unscrupulous activities by the auctioneers at the cost of national exchequer. As the value of the property is assessed both by the valuation wing and the Appropriate Authorities separately at the time of passing purchase order, the Committee consider it very necessary that reserve price

should be fixed keeping in view these two separately compiled figures and also taking into consideration the element of price escalation in case there is time gap in disposal thereof.

85. The Committee are also dismayed to find that due to lack of coordination with the State Urban Land Ceiling Authorities, the Department has passed purchase orders even in cases hit by the Land Ceiling Act, and consequently the transferors were unduly benefitted by paying substantially higher amounts by the Department, as compared to what they would have obtained from the State authorities as compensation. The Ministry have conceded that some cases have been noticed where either parties to the transaction did not indicate the applicability of Urban Land Ceiling Act or the concerned State Government Authorities did not supply the information to the Appropriate Authority within the prescribed time limit. For passing of the purchase order. The Committee feel that it should now be possible for the Appropriate Authority to collect all the relevant information during the course of statutory hearing to be extended to the parties as per Supreme Court decision. The Committee feel that it should also not be difficult now to get such information from the State Government Authorities as the time limit for passing the purchase order is proposed to be extended from two to three months, from the end of the month in which Form 37-I is filed. The Committee would emphasize the need for ensuring full coordination between all the authorities so that the private parties do not derive any additional gratuitous benefit at the cost of national exchequer.

86. The Committee are extremely unhappy over the utter lack of coordination and mutual exchange of information between the various functionaries of the Income Tax Deptt., the Registering Office and the Appropriate Authority. Audit scrutiny has revealed a number of cases where the Appropriate Authorities failed to pass on copies of its orders on the valuation report estimating the market values of properties under consideration for purchase to the assessing officers. Similarly the Officers issuing tax clearance certificates also failed to send copies thereof to the Appropriate Authority. The Committee regret to observe that in respect of cases where the Appropriate Authority/State Registering authority had determined the fair market values at substantially higher levels than the appropriate consideration, proceedings for levying of Capital gains/gift tax etc. were not initiated. 749 cases in 8 different circles have been detected by audit scrutiny where fair market value amounted to Rs. 66.89 crores against the apparent consideration shown to the extent of Rs. 39.09 crores. The Committee are informed that long term action plan for survey for five years 1990-91 to 1993-94 has prescribed code No. 201 requiring CIB units to collect information available in Form 37-I received by Appropriate Authorities on regular basis. The Committee desire that this action plan should be evaluated to find out whether it has achieved the desired objective and the result thereof apprised to them. The Committee would also like

the Deptt. to ensure that there is no short/non levy of capital gains and/or gift tax due to lack of coordination between various functionaries of the Deptt. and State Registering Authority.

87. Another area of concern for the Committee is the fact that Board have not evolved detailed guidelines to regulate the scheme. Only Departmental instructions have been issued from time to time. Certain guidelines decided in a meeting of the Appropriate Authorities held on 17 & 18 October, 1986 are being followed. Strangely enough, failure to issue detailed guidelines has been justified by the Ministry by saying that the provisions are being administered by 3 members of Appropriate Authority; of which 2 are of the rank of Commissioner of Income tax to the Central Govt. and the third Member is of the rank of Chief Engineer to the Central Government. In view of this the Ministry has not felt it necessary to prescribe registers containing specific proformae for keeping a watch over the statutory functions performed by the Appropriate Authorities. The Audit Para has highlighted several problems in their day to day functioning which the Appropriate Authorities have not been able to overcome. The Committee would impress upon the Ministry the need for evolving detailed guidelines so as to enable the Appropriate Authorities not only to take prompt but also uniform decisions in all cases. The fact that strict time limits are incorporated in the chapter make it all the more imperative that maintenance of proper registers and performae are prescribed to keep strict vigil on all pending action. The Committee also desire that the Board should call for a periodical report from the Appropriate Authorities regarding their activities indicating *inter-alia* therein the details about no objection certificates issued, purchase orders passed, properties purchased and sold, litigation cases etc. so as to undertake the desired monitoring at their level with a view to ensuring smooth & effective functioning of the scheme.

88. The Committee have been informed that under the previous scheme of acquisition of immovable properties under Chapter XXA, out of one and a half lakh cases examined by the authorities, 7300 cases only were considered fit for passing final orders. But ultimately, the authorities were able to issue final orders in 91 cases and ended up acquiring just 15 properties of a total value of Rs. 35 lakhs only. According to the Ministry of Finance, litigation process in the old scheme was so complicated that they were handicapped to take any action. With a view to overcome the difficulties experience in the old scheme which was discontinued after 30 September, 1986, the new provision was inserted with effect from 1 October, 1986 conferring on the Government a pre-emptive right to purchase immovable properties. The Committee are concerned to find that the authorities concerned have failed to achieve better results even in the operation of the new scheme during the

last six and a half years. out of 22811 cases processed under this scheme, purchase orders were passed in 812 cases. Of these 812 cases, 430 properties with apparent consideration of Rs. 228 crores were sold, yielding a profit of only Rs. 60 crores. The Committee are further distressed to find the negative point in respect of 79 cases in which the authorities have already paid Rs. 43 crores and the relevant properties are yet to be sold. The Finance Secretary conceded during evidence before the Committee that it is an administrative delay and it is a question of speeding up the process. The Committee take a serious views of this administrative delay and emphasize that the process of disposal of purchased properties should be expedited as huge amounts of public money has been unnecessarily locked up. The Committee would also stress the need for prescribing a statutory time limit for disposal of purchased properties under this scheme. Having regard to the objective of the new scheme as a deterrent to the widespread operation of black money, the Committee believe that more intensive scrutiny of the cases to ascertain the true market prices was also called for so as to identify the real tax evaders. This aspect should also be suitably taken care of in future.

89. The preceeding paragraphs abundantly establish that the scheme of purchase of properties by the Central Government has failed to achieve the desired results on the following counts:

- i) the scheme is beset with litigation despite a specific provision denying any right to appeal.
- ii) the scheme has no safeguard against deliberate understatements in apparent consideration below the limit prescribed under law either individually or by splitting or in not filing the prescribed statement (37-I) in violation of the statute.
- iii) there has been absence of principled selection of cases for purchase, which tended to erode the objectivity of the scheme
- iv) the scheme has failed to effectively tackle cases of auction sales, transfers through builders/developers etc
- v) Absence of appropriate guidelines and procedures
- vi) Inexcusable delay in the disposal of purchased immovable properties
- vii) The scheme since its inception has never been reviewed to know its effectiveness with a view to effect necessary improvements.

The Committee take a serious view of lack of coordinated and effective approach on the part of the Ministry of Finance in the implementation of the scheme due to which they failed to achieve the avowed objectives of countering evasion of tax through under statement of the value of immovable properties in the transfer deeds and checking the proliferation of black money. The Committee recommend that comprehensive and effective steps should now be taken immediately in the light of their recommendations made in this Report and the recent Supreme Court judgement on the constitutional validity of the scheme to remove all the lacunae which have thus far impeded the smooth and effective functioning of the scheme. The Committee would like to be apprised within six months the concrete steps taken in this regard.

NEW DELHI;
28 April 1993;

8 Vaisakha, 1915 Saka

ATAL BIHARI VAJPAYEE
Chairman,
Public Accounts Committee

APPENDIX I

(Vide para 1)

Systems Appraisal Purchase of Properties by Central Government

Introductory

2.01.1. Tax evasion leads to generation of black money and the operation of a parallel economy. Tax avoidance which circumvents the law legally is also undesirable. The Government had been trying to combat the two evils through legislative measures and by tightening the process of enforcement machinery.

A number of anti-tax avoidance/evasion measures were included in the direct tax laws on the basis of the suggestions and recommendations of the various Committees and Commissions appointed by Government. Notable among them are:

- (a) The provisions to book under statements in value of immovable properties in the transfer deeds to relations and associate persons and cases where the declared consideration was understated in the document of transfer;
- (b) the provisions requiring the production of a tax clearance certificate as a precondition to registration by the registering authority;
- (c) powers of survey, search and seizure;
- (d) acquisition of immovable properties whose values were understated in transfer documents;
- (e) purchase of such properties by Central Government; and
- (f) valuation of properties by an independent valuation cell.

The legislations

2.01.2 Taking note of the free play of unaccounted money in real estate transactions, the law (1964) enabled the assessing officer to ignore the value shown by assessee in the transfer deeds and to substitute in its place the fair market value in order to determine the true amount of capital gains, in cases where the transferor and the transferee were directly connected with one another and the assessing officer had reason to believe that the transfer was motivated with the object of avoidance of tax or reduction of the liability to tax on capital gains. In certain other cases where, in the opinion of the assessing officer, the fair market value of the capital asset exceeded the value so declared in the instrument of transfer, the full value of the consideration shall be taken to be the fair market value as on the date of transfer and capital gains computed accordingly.

Under another provision with effect from 6 October, 1964 the registering authority was not to register any document which purported to transfer, assign, limit or extinguish the rights, title and interest of any person to or in any property valued at more than Rs. 50,000 (Rs. 2 lakhs from 1 April, 1988) without the production of a certificate stating that the transferor had paid all taxes or had made satisfactory arrangements for their payment.

For purposes of gift-tax, it was provided that where property was transferred otherwise than for adequate consideration, the amount by which the market value of the property exceeds the value of the consideration shall be deemed to be gift made by the transferor and charged to tax accordingly.

The legislation, as amended with effect from 15 November, 1972, on the recommendations of the Direct Taxes Enquiry Committee (the Wanchoo Committee) in its Report on black money, empowered the Central Government to acquire any immovable property, where such property was transferred by way of sale or exchange and the consideration for such transfer was not truly stated in the instrument of transfer. The scheme provided for initiation of acquisition proceedings where the fair market value of the property exceeded Rs. 25,000, if the fair market value exceeded the apparent consideration, by more than 15 percent of such consideration and the object of understatement was to obtain undue tax advantage. From 1 July 1982, the area of operation was widened to cover transfer of flats in co-operative societies and companies, part performance sales under the Transfer of Property Act, 1882 and long term (over 12 years) leases. With a view to eliminating unproductive work in a large number of small cases, the monetary limit was raised to Rs. 1 lakh from 1 June, 1984.

Direct Tax Laws Committee in its Interim Report (December 1977) had however observed that these provisions had the immense capacity to generate paper work and litigation and could be potent tools of harassment and provide avenues for corruption. The Long Term Fiscal Policy announced in December 1985 also noted the large potential in litigation and harassment involved in the scheme and not so productive results, and in keeping with the new scheme formulated therein, discontinued the operation of the existing scheme of acquisition of properties in relation to transfers after 30 September 1986, and empowered the Government with a pre-emptive right to purchase any immovable property which was being

transferred for a value exceeding Rs. 10 lakhs on the hope that it would induce tax payers to disclose the true values of properties and eliminate litigations. These provisions were initially applied from 1 October, 1986 to properties valued over Rs. 10 lakhs in the 4 metropolitan cities and then extended to 24 other cities through notifications of 1987, 1989 and 1991.

Earlier in 1981, while the provisions regarding the compulsory acquisition of properties were in force, the Supreme Court, explaining the purport and intent of the earlier legislation on capital gains to reduce the incidence of tax by transfers to associates and relations and to prevent understatements in real values of properties transferred to any person, observed that the first part applied to cases where the transferee is person directly or indirectly connected with the assessee and where the object of the understatement was to avoid or reduce the income-tax liability of the assessee on capital gains and the latter, to cases where the actual consideration received by the assessee was not disclosed and the consideration declared in respect of the transfer was shown at a lesser figure than what had actually been received, and that the section did not intend to bring to charge any fictional receipt not accrued or received. According to the ratio of the judgement, the onus of establishing the understatement or concealment and that it was with a view to conceal income and to avoid or reduce the liability to tax on capital gains, was on the department and the burden could be discharged by the revenue by establishing facts and circumstances from which a reasonable inference can be drawn. The provisions were rendered inoperative by the tests laid down by the Supreme Court which were practically impossible to be proved and the provisions relating to the substitution of declared value by fair market value for the purpose of levy of capital gains were deleted from 1 April, 1988, as apparently the responsibility of discharging the onus of understatement was formidable.

Scheme of purchase of properties

2.01.3 The salient features of the scheme with effect from 1 October, 1986 are:

- (i) the provision enables the Central Government to make a simple purchase of a property already offered for sale;
- (ii) there is no compulsory acquisition involved and hence no solatium is payable;
- (iii) the provisions apply to the cities of Bombay, Calcutta, Delhi and Madras from the beginning i.e. from 1 October, 1986; Bangalore and Ahmedabad from 1 October, 1987; Lucknow, Hyderabad, Cochin, Coimbatore, Bhubaneswar, Cuttack, Patna, Kanpur, Jaipur, Chandigarh, Surat, Indore, Nagpur, Pune, Madurai, Trivandrum and Bhopal from 1 June 1989 and Faridabad, Gurgaon, Ghaziabad, Baroda and Noida from 1 April, 1991.

- (iv) only properties worth above Rs. 10 lakhs are at present covered by the scheme;
- (v) the property purchased vests in the Central Government free from all encumbrances;
- (vi) transfers to a relative on account of natural love and affection are outside the operation of the anti-tax evasion measure; and
- (vii) non compliance or contravention of the prescribed procedure invites imprisonment upto 24 months and fine.

Objectives

2.01.4 The objectives of the scheme are:

- (i) to counter evasion of tax through understatement of the value of immovable properties in transfer deeds; and
- (ii) to check the proliferation of black money in real estate transactions.

Prescribed Procedure

2.01.5 An appropriate authority is a quasi-judicial authority constituted under the Income-tax law to perform the functions regarding purchase of immovable properties, such as passing orders for purchase of properties, issuing no objection certificates and declarations regarding revesting of properties etc. For the purpose, the appropriate authority is vested with powers regarding discovery and inspection, summoning and attendance of witnesses and examination of witnesses under the Code of Civil Procedure Code, 1908 as are vested in a Court. It consists of three members, two from the Indian Income-tax service Group A in the rank of Commissioner of Income-tax or equivalent or higher post and one from the Central Engineering Service holding the post of Chief Engineer or any equivalent or higher post. There are at present 7 appropriate authorities located at Delhi, Lucknow, Calcutta, Madras, Bangalore, Bombay and Ahmedabad exercising jurisdiction over neighbouring cities covered by the scheme.

No transfer of any immovable property covered by the scheme shall be effected without first entering into any agreement for transfer between the transferor and the transferee at least three months before the intended date of transfer.

The agreement for transfer shall be in writing in the form of a statement (Form 37-I of the Income-tax Rules, 1962) and shall be furnished to the appropriate authority in duplicate within the prescribed period viz. before 16 October, 1986 in a case where the agreement for transfer was entered into before 1 October, 1986 in respect of the four metroplitan cities (No action in cases of belated compliance made on or before 15 November, 1986), before 30 October, 1987 in respect of agreements for transfer entered into in Bangalore and Ahmedabad cities, and in all other cases before the expiry of 15 days from the date on which the agreement for transfer is entered into.

On receipt of the statement (in Form 37-I) the appropriate authority may make an order, after recording the reasons, for purchase of the property at an amount equal to the amount of apparent consideration within a period of two months from the end of the month in which the statement is received. It is clarified that the properties to be acquired will be indentified by the recognised statistical method of random sampling.

Where an order for the purchase of any immovable property is made, the Central Government shall pay by way of consideration an amount equal to the apparent consideration to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property is vested in the Central Government. If the Central Government fails to pay the amount to the persons or deposit the same with the appropriate authority within the specified period, the order to purchase the property will stand abrogated and the property will stand re-vested in the owner after the expiry of the period under a declaration made by the appropriate authority in writing to that effect. The person entering into an agreement in respect of which particulars (in Form 37-I) have been furnished shall not revoke or alter such agreement unless the appropriate authority has not made an order for purchase of the property by the Central Government and the period specified for making such order has expired or the order of the appropriate authority stands abrogated, and any transfer of any immovable property in contravention of these provisions shall be void.

A registering officer under the Registration Act, 1908 is barred from registering any document of transfer of any immovable property exceeding the value of Rs. 10 lakhs and no person shall do anything which will have the effect of transfer of any immovable property, unless the appropriate authority certifies that it has no objection to the transfer.

The order passed by the appropriate authority is final and conclusive and cannot be called in question in any proceedings under this act or any other law.

Any person who fails to comply with the provisions of Chapter XXC is punishable with rigorous imprisonment from 6 months to two years and is also be liable to fine.

Implementation

2.01.6 632 properties had been purchased for a consideration of Rs. 232 crores. of these, purchases in respect of 301 properties are under litigation. 246 properties which had been purchased for an apparent consideration of Rs 94 crores have been sold at a profit of Rs. 33 crores i.e. 35 per cent.

The number of properties purchased and sold in various places are; Bombay 120, Delhi 38, Madras 27, Ahmedabad 20, Bangalore 19, Pune 15, Calcutta 4 and Lucknow 3.

Scope of Review

- 2.01.7 This review attempts to make an evaluation of the anti-tax evasion measures through purchase of property introduced in the Income-tax law with reference to their conceptual framework, objectives, implementation and the overall success. In so doing, effort has been made to identify any lack of overall cohesion while enacting the legislations and the extent of lack of co-ordination and co-relation between the different Government agencies connected with sale and registration of properties.

Statistical data

2.01.8 The following are the particulars of number of statements in Form 37-I received, number of no objection certificates issued, number in which purchase orders were passed, number in which writ petitions were pending and the number of properties sold in public auction, upto the end of February 1991:

Sl. No.	Location of appropriate authority	Cities	No. of statements in Form 37-I received	No. of NOCs issued	No. of orders passed	No. of suits pending	No. of properties sold
1.	Delhi	Delhi	2,354	1,905	123	85	38
		Jaipur	16	7	4	3	—
		Chandigarh	30	16	7	6	—
			2400	1928	134	90	38
2.	Bombay	Bombay	7,021	5,827	232	76	120
		Pune	916	647	44	14	15
		Nagpur	88	77	1	1	—
			8,025	6,251	277	91	135
3.	Calcutta	Calcutta	757	518	41	34	4
		Bhubaneswar	13	10	—	—	—
		Cuttack	—	—	—	—	—
			770	528	41	34	4
4.	Madras	Madras	1,224	895	50	14	27
		Coimbatore	71	47	7	2	—
		Madurai	7	7	—	—	—
			1,302	949	57	16	27
5.	Bangalore	Bangalore	2,701	1,312	64	40	19
		Hyd'bad	259	182	6	6	—
		Cochin	62	35	1	—	—
		Trivandrum	43	8	1	1	0
			3,065	1,537	72	47	19

6.	Ahmedabad	Ahmedabad	321	273	38	10	20
		Surat	35	33	2	1	—
		Indore	56	55	—	—	—
		Bhopal	7	7	—	—	—
			419	368	40	11	20
7.	Lucknow	Lucknow	43	18	8	5	3
		Kanpur	25	13	1	1	—
		Patna	48	20	2	2	—
			116	51	11	8	3
	Total	16,097	11,912	632	301	246	

These 246 properties with apparent consideration aggregating to Rs. 94.10 crores were sold for Rs. 127.20 crores and the Government made a profit of Rs. 33.10 crores, while no objection certificates were issued in 74 percent of the cases (11,912 out of 16,097 statements received) during four years (1986-90) operation of the scheme.

Highlights

2.01.9(1) Chapter XXC dealing with the scheme of purchase of properties in certain cases of transfer by the Central Government was operative from 1 October 1986. The provisions do not require allowing opportunity to be heard, nor allow any right of appeal. However, the constitutional validity of the scheme has been challenged, *inter alia*, on the ground that it infringes the right to buy/sell property. The matter remains sub judice. Some individual cases have also been challenged on procedural grounds like orders passed without show cause notice or hearing or issuance of non-speaking orders.

(2) The new scheme is applicable to immovable property offered for sale at value above Rs. 5 lakhs as may be prescribed by the Government. It replace the earlier provisions for acquisition of properties applicable to the entire country which were proving time-consuming and ineffective with endless litigation and harassment. The Government put the cut off level of consideration at Rs. 10 lakhs, initially applied the scheme to the four metropolitan cities of Bombay, Delhi, Calcutta and Madras from 1 October 1986 and thereafter till April 1991, extended it to 24 more cities. Thus coverage of the scheme has remained severely restricted and similar transactions outside the few notified cities remain beyond the reach of the scheme thereby appearing to undermine the equity of the scheme.

(3) As at present the scheme applies to the transfer of immovable properties of value exceeding ten lakhs rupees in each case. There has been no move to readjust the financial limit, having regard to the magnitude of operation of the scheme etc. and taking note of shift in real estate prices. Further, under the rules framed under the Act, the value has been prescribed as the apparent consideration of the relevant property. Consequently where the stated consideration of a property is deliberately kept below the prescribed limit, the case automatically goes out of the

purview of the scheme. Further, in line with the judgement of the Calcutta High Court, the scheme is not attracted where jointly-held property is transferred if the share of each co-owner is below the stipulated monetary limit, even though there has been no partition physically identifying each share. There have also been cases of transfer of the same property to the same party through more than one document, each showing apparent consideration below Rs. 10 lakhs.

Auction cases too remain outside the scope of the scheme; the Bombay High Court held that there can be no agreement between parties in an auction sale.

(4) The Central Government have so far constituted seven appropriate authorities located at seven different cities and have defined their jurisdiction on the basis of their geographical location. Available statistics revealed wide disparities in the work-load of the appropriate authorities, which varied from 0.7 percent at Lucknow to 50 percent at Bombay.

(5) The institution has been in force for over four years. The Central Board of Direct Taxes has not so far undertaken any evaluation of the scheme nor has it prescribed any work norms for the appropriate authorities or the priorities to be followed in the disposal of the cases.

(6) According to available statistical data, upto the end of February 1991, the appropriate authorities had issued 11,912 no objection certificates out of a total of 16,097 intimations in Form 37-I received since inception, (around 74 percent) and had passed orders for purchase in 632 cases. This was about 4 percent of the total number of cases processed. 246 properties with an apparent consideration of Rs. 94.10 crores were sold for Rs. 127.20 crores, making a profit of Rs. 33 crores, a profit margin of 35 per cent. During the financial years 1988-89 and 1989-90, 95 and 123 properties only were purchased and the value of the properties so purchased amounted to Rs. 108.71 crores. Of these in 52 (24+28) cases, the value exceeded Rs. 50 lakhs each.

(7) Under the scheme, no transfer of any property of value exceeding rupees ten lakhs shall be effected without entering into an agreement in the form of a statement in Form 37-I before three months of the intended date of transfer and furnishing the same to the appropriate authority within 15 days of the date of entering into the agreement. The appropriate authority has the option of passing the order for purchase within two months from the end of the month in which the statement is received. Failure to furnish the statement makes the defaulter liable to rigorous imprisonment upto 2 years (minimum 6 months) and fine. The Central Board of Direct Taxes has however not laid down any procedure for watching and reporting the receipt and disposal of these statements. Test-check revealed that during 1986 to 1990 there were delays ranging from 3 days to 1190 days in furnishing the statements, but proceedings against the

defaulting parties, were not initiated although the Board had in 1987 directed identification of defaulters. The reasons for not initiating action were not on record.

(8) Test-check revealed cases of transfers without the requisite statement in Form 37-I being filed. Under the new scheme, in the absence of liaison with the registering authorities, there is no machinery to ensure that the statement in Form 37-I were filed in all liable cases and that no property was registered without a no objection certificate.

(9) As per CBDT instructions, properties to be purchased were to be identified by statistical method of random sampling. Upto February 1991, in 632 cases only out of 16,097 statement in Form 37-I received, purchase orders were issued. There was no indication of application of statistical sampling in the process of decision making. It is also not clear as to how the appropriate authorities are going about in initial screening of the Forms 37-I received, identifying possible cases of gross understatement of the considerations, selecting cases for reference to the valuation cell and deciding on cases for pre-emptive purchase.

(10) The appropriate authority, on receipt of the statement in Form 37-I has, within 2 months, to issue either the pre-emptive purchase order or the no objection certificate on the strength of which registration of the sale deed would take place. It was however seen that the appropriate authorities simply rejected/fled a large number of Forms 37-I on the ground that these were defective or incomplete without any further action. It could not have been the intention of the legislation that some defects in the forms cannot be got rectified or point of doubt clarified. Such action may not promote the objective of the scheme, apart from the inconvenience that may be caused to parties of property deals.

(11) Out of 16,097 cases, processed during October 1986 to February 1991, in 632 cases with apparent consideration of Rs. 232.12 crores (an average price of Rs.37 lakhs per case), purchase orders were passed. Of these 246 properties with apparent consideration of Rs. 94.10 crores were sold. Apparently, high value properties were ordered for purchase. In bulk of the other cases (11,912 i.e. 74 percent) no objection certificates were issued. The aggregate apparent consideration of these properties and the range of the value of the properties in these cases are not available. Having regard to the objective of the legislation as a deterrent to the widespread operation of black money, more intensive scrutiny of these cases to ascertain the true market prices was called for so as to identify the real tax evaders.

(12) In practice, the appropriate authorities have had considerable difficulty in handling cases of transfers by way of lease/sub lease of industrial undertakings lock, stock and barrel, agreement between land owners and developers/builders for construction of complexes conditional transfers or transfers of tenanted properties.

(13) Test check revealed that the reserve price for sale is being fixed generally by adding 15 percent to the apparent consideration. Thus the department is not taking note of the fair market value as assessed by its own valuation officers on which the decision to purchase is based. Even then, many of the cases attracted only one or two bidders.

(14) The results of the review disclosed lack of co-ordination between the Urban Land Ceiling authorities, the registering authorities, the tax clearance officers and the assessing officers due to want of either a legal provision or a proper mechanism. Cases were noticed where properties were purchased for a price much in excess of the compensation payable under the relevant Urban Land Ceiling Act. For want of such co-ordination, there has also been substantial non-short levy of capital gains and/or gift tax.

(15) The scheme of pre-emptive purchase of properties involves an elaborate procedure starting from receipt of Form 37-I and ending in auction sale of the concerned properties. Though four years have elapsed, the Central Board of Direct Taxes have not laid down any guidelines to regulate the scheme and prevent slippages. In its absence, the appropriate authorities have maintained their own registers. But laying down uniform registers etc. would be desirable.

(16) As per information furnished by the Ministry of Finance, under the erstwhile scheme of acquisition of properties during the six years 1985-86 to 1990-91, out of a total of 9,72,730 intimations received in 1,53,162 cases notices were issued and 92,330 cases were dropped. In a small number of 490 cases, order were passed. The number of properties actually taken over was only 92. Under the new scheme of purchase of properties by the Central Government out of 16,097 intimations received in 11,912 cases no objection certificates were issued, purchase orders were passed in 632 cases (4 percent) of which 301 cases went in litigation. The statistics reveal that the new scheme too suffers from voluminous paper work and litigation, despite having been limited in scope. A review of the scheme in its existing form may be warranted keeping in view the unproductive work and the available manpower.

To sum up, having found that the earlier scheme of acquisition of properties had led to endless litigation and proved ineffective, Government formulated the scheme of pre-emptive purchase of properties in the hope that it would induce the transferers to state the true amounts of consideration in transfer deeds, or else would enable the Central Government to purchase the properties at the stated consideration with no right of any further appeal. Test review, however, suggested that when compared with the scheme of acquisition of properties on the whole, the scheme could not have been a success on various counts:

- the scheme is beset with litigation despite a specific provision denying any right of appeal.
- apparently, the scheme had no safeguard against deliberate under-statements in apparent consideration below the limit prescribed under law either individually or by splitting up of the properties for sale, or in not filing of the prescribed statement in violation of the statute.
- there was no evidence of principled selection of cases for purchase, which tended to erode the objectivity of the system.
- the scheme has not effectively tackled cases of auction sales, transfers through builders/developers etc.
- the implementation of the scheme was deficient in many respects nor was it monitored by issue of appropriate guidelines and procedures.

Detailed review

Position of the legislation

2.01.10.(a) Extent of coverage

Prior to 1 October 1986, from which date the provisions for pre-emptive purchase become operative, the erstwhile provisions on compulsory acquisition held the ground and where applicable throughout the country. Even though the latter provisions are no longer applicable except for past cases initiated before 1 October, 1986, the operation of the new provisions remains rather restricted. These apply only to properties with apparent consideration above Rs. 10 lakhs. Further, only four metropolitan cities were covered initially from 1 October, 1986 and thereafter till date, another 24 cities have been brought within the purview of pre-emptive purchase. Thus, a very small portion of real-estate transactions attracts attention which is not in tune with the general objectives of the legislation.

(b) Stated consideration below Rs. 10 lakhs by splitting up or otherwise

Even in respect of the few cities to which these apply, the provisions for pre-emptive purchase are activated only where the stated consideration for the transfer of property in the agreement entered into is above Rs. 10 lakhs. Bulk of the transactions therefore falls outside the scope of these provisions. There being no check at all, from the angle of pre-emptive purchase, of cases below the monetary ceiling even on a small percentage of random sampling, there is free scope of understating the consideration so as to bring it below Rs. 10 lakhs for any transaction by itself or by way of splitting/division of the properties.

The Calcutta High Court had also held, in the case of M/s. Multicon builders Pvt. Ltd that no action was possible in cases of splitting. Consequently, properties jointly owned by more than one person, even where these were not formally partitioned among co-owners whose shares were not physically identifiable, were being transferred, without reference

to the appropriate authority, to the same parties though execution of separate documents by each co-owner showing the apparent consideration in each document below Rs. 10 lakhs, though the transactions really involved transfers of properties each costing well above Rs. 10 lakhs. There are also cases of the same property owned by one individual having been transferred to the same party in parts by executing more than one document, each exhibiting apparent consideration below Rs. 10 lakhs. In Karnataka, Madhya Pradesh, West Bengal and Kerala circles, 14 properties, jointly owned by several individuals with aggregate apparent consideration of Rs. 316.84 lakhs but each property valuing more than Rs. 10 lakhs, were sold by either transferring the individual shares of the co-owners in separate documents or gift deeds or in parts on different occasions with proportionate apparent consideration in each individual case below rupees ten lakhs. In one such case in Kerala circle a person owning a 3 storeyed building on land admeasuring 38.10 cents by a deed executed on 2 May 1990, transferred the land and the ground floor of the building for a consideration of Rs. 9 lakhs. On 3 August 1990, the remaining floors of the same building were transferred to the same transferee for Rs. 4 lakhs, the total consideration aggregating to Rs. 13 lakhs.

Auction cases

(c) It was held by the Bombay High court, in **Abdus Samat Haji Adam Kantharia and others vs. Union of India and others* that since there would be no agreement between the parties in the cases of auction sales, these would not fall within the purview of the scheme of purchase of properties. There has been no definite procedure for dealing with such cases in the context of the requirement that documents transferring immovable property of value exceeding the prescribed amount can be registered only on the strength of no objection certificate issued by the competent authority on receipt of the agreement for transfer. It was seen in audit that in some of these cases, statements in Form 37-I were being submitted to the appropriate authority who also issued no objection certificates while some did not come up at all before the appropriate authority.

In auction cases, while there may be no formal agreement prior to the auction, a specific provision for obtaining no objection certificate from the Income-tax Department before registration of the transfer following auction may not pose any difficulty.

Validity of legislation/action thereunder under challenge

2.01.11 The provisions make the orders of the appropriate authority final and conclusive, not to be questioned in any proceeding. However, remedy by way of writs remains open and the constitutional validity of the scheme is not yet settled. As stated in Para 6, as many as 301 out of 632 cases of purchase orders remain under litigation. The validity is challenged on mainly two grounds, of the provisions being ultra vires the rights conferred under the Constitution or the scheme being beyond the legislative

competence of Parliament. Further, in some cases the orders of the competent authorities have been challenged even on other grounds, including procedural, such as lack of show cause notice, order without stating reasons etc. Thus, though under the legislation the orders of appropriate authorities shall be final and conclusive and shall not be called in question under any law, the provision has become practically otiose. To illustrate, in two cases of Uttar Pradesh, the transferers filed writ petitions and stalled further action by the appropriate authority, in one due to the purchase order having been passed without giving show cause notice or hearing the parties and in the other, due to the purchase order having failed to mention specific reasons.

In some cases, even tenants moved the courts, though their rights were coterminous with those of the landlord. For instance, in Tamil Nadu circle, two tenanted properties were purchased by the Government for an apparent consideration of Rs. 52.50 lakhs. The tenants refused to hand over possession and moved the High Court. Similarly tenants of six properties (purchased price Rs. 320. 16 lakhs) in Karnataka circle had filed writ petitions challenging issue of purchase orders without hearing them. It was however seen that in Gautham's case challenging the constitutional validity of the provisions of the scheme, the Attorney General had stated before the Supreme Court that they had no intention to evict the tenants from the buildings purchased under the scheme. This may jeopardise government interest in these cases. The Govt. has not been able to proceed further against the tenants and get vacant possession.

Three interesting cases of non-speaking order of Maharashtra circle are given below:

(a) According to an agreement dated 15 May 1989, in one case in Maharashtra circle, M/s. CH sold a row house consisting of ground floor and upper floor with a built up area of 3,143 sq. ft. including lift, staircase and open terrace. The sale included garden-cum-parking, etc. The sale was made to M/s. AI for an apparent consideration of Rs. 1.21 crores (discounted value of Rs. 1.19 crores determined at the rate of Rs. 2,833 per sq. ft.). The valuation officer pointed out in his report that the sale instances per sq. ft. in the same building in respect of flats were as high as Rs. 4526 and Rs. 4472 and therefore the sale instance at the declared rate of Rs. 2,833 per sq. ft. was low. The Income-tax Officer attached to the appropriate authority had also pointed out that they had received a case in respect of a flat in 7th floor of the building at the rate of Rs. 3,331 per sq. ft. as on 30 May 1989 and, therefore, the rate of Rs. 2,833 per sq. ft. was low. In his order of 5 July 1989 the appropriate authority had only observed that there was no case for purchase on merits without making a speaking order and ordered for issue of no objection certificate. While the rates of flats taken for striking the comparative price were very high, the value of present row house should not have been lower, having regard to the facilities it commanded.

(b) In another case in the same circle, the development rights of the land measuring 15,840 sq. ft. (declared F.S.I. 15,800 sq. ft.) were agreed to be transferred for a net consideration of Rs. 48.19 lakhs (excluding share of stamp duty to be borne by the vendor) *vide* agreement dated 18 April 1988 by a vendor to a private limited company of builders at the rate of Rs. 304 per sq. ft. (F.S.I.). The valuation officer pointed out *inter alia*, in his investigation report on 7 June 1988 that the rate declared in the agreement was low compared to the rate of 411 per sq. ft. (F.S.I.) in a comparable instance of sale of land in a similar locality in January 1988. Besides, the property was in a better footing in as much as the building plan was approved and foundation work had also been partly completed. He had, therefore, recommended further necessary action. The Deputy Commissioner of appropriate authority upheld the view and on 17 June 1988 worked out the understatement to the extent of 35 percent. The property was jointly inspected by members of the appropriate authority and orders for issue of no objection certificate were issued on 22 June 1988 without recording any speaking order and without spelling out the reasons for not resorting to pre-emptive purchase.

(c) By an indenture dated 30 March 1989 a reputed Industrial Research and Development Centre in Bombay entered into an agreement with a lessee engaged in communications and system studies for a lease of an area admeasuring 9803.25 sq. ft. of super built up area on 18th and 1st floors of a high rise building in Bombay for 60 years for an apparent consideration of Rs. 1.76 crores at Rs. 1,800 per sq. ft. super built up area. This amount was payable over a span of 14 years in 15 instalments of Rs. 11.76 lakhs. The first instalment was payable by 1 March 1989 and the balance 14 on 1 March of each subsequent year. The discounted value of the apparent consideration worked out to Rs. 1.09 crores and rate per sq. ft. of super built up area worked out to Rs. 1109 per sq. ft. The transfer included parking space also the details of which were not specified. This would further reduce the rate of lease.

It is seen from the records that transferee has entered into another agreement called 'Service agreement' with the transferer on 14 July 1989 for providing the services of (i) Computer Centre (ii) International Communication Centre and (iii) Document Reproduction Centre subject to allocation of suitable accommodation to transferee. Accordingly, the transferer provided the above accommodation to transferee and charged Rs. 1,800 per sq. ft. as prevailing in the year 1986. The valuation officer had calculated a rate of Rs. 3,048 per sq. ft. in another case in the same building, compared to which the discounted rate in the present case (Rs. 1,109 per sq. ft.) worked out to about 36 percent. By applying the rate of Rs. 3,048 per sq. ft. to the present case, the apparent consideration should be about Rs. 2.98 crores as against the discounted value of Rs. 1.09 crores.

The appropriate authority decided on 23 June 1989 to issue no objection certificate to the above transaction (case No. 4302) on the ground that the facts had been carefully gone through including the papers on the file and the agenda for the meeting held on 20 October 1987 of the Managing Committee which included a representative of Government of Maharashtra. The rate of Rs. 1,800 per sq. ft. of super built up area was agreed upon much prior to the service agreement.

The lease agreement was entered into on 30 March 1989 and the service agreement was entered into on 14 January 1989. According to the lease agreement the rate at which the property was to be sold was determined as Rs. 1,800 per sq. ft. The Deputy Commissioner in his note dated 6 June 1989 drew the attention of the appropriate authority to the original proposal and revised proposal of August 1986 made by the transferee. However, till October 1986 the rate at which the space was to be transferred was not determined. The Deputy Commissioner further observed that there was nothing on records to show that Rs. 1,800 per sq. ft. was the rate at which the transfer was to be made to the transferee. The time gap between the lease agreement and the service agreement was too short and it could not be taken as the rate of Rs. 1,800 per sq. ft. was determined before entering the service agreement. Neither lease agreement nor service agreement referred to negotiations in 1985 or 1986. The terms of service agreement was 15 years or to expire earlier, whereas the lease agreement for the premises was for 60 years. The transferor was not bound to utilise the services of transferee exclusively and the term of agreement could be varied on mutual consent.

The Deputy Commissioner further observed that resort to the service agreement by the parties was a manipulative tactic and such huge difference in the apparent consideration of Rs. 2.99 crores, compared to the market rates could not be explained away by the service agreement. Such huge difference could probably finance the whole project of the transferee. The benefit to the centre was negligible. The services of the transferee were not indispensable as the agreement contained provision for altering the terms and even doing away with the services of the transferee. The Centre's occupants and users were also not party to the service agreement and hence not bound to avail the services of the transferee. The Deputy Commissioner felt that it was to defeat such manipulative designs that the legislature had provided for pre-emptive purchase powers, as vesting of properties free from all encumbrances in the Central Government would reach some finality. He further observed that even if it came to litigation, the case would be worth fighting for in the courts.

In the light of the above observations the no objection certificate issued by the appropriate authority was not explained.

Cases of lease/sub-lease power of attorney, tenanted properties and agreements with developers/builders

2.01.12 Cases of transfers by way of lease/sub-lease or power of attorney, of industrial undertakings as going concerns, by agreement between land owners and developers/builders for construction of complexes on plots etc. have generally proved somewhat difficult. Often, some of the conditions of the agreements deterred the concerned appropriate authorities from interfering in the transactions. The same happened in respect of tenanted properties and also where owners had entered into agreements with developers/promoters of apartment buildings, the main features of which are:

- (i) The owner retains certain percentage of interest in the undivided share of land.
- (ii) The developer acquires the right to exploit the entire land for construction of high rise buildings.
- (iii) The owner is obliged to transfer the interest in the undivided share of the land surrendered by him, to the developer or his nominees either in full or in piecemeal at a future date(s) as required by the developer.
- (iv) Consequent upon the surrender of certain percentage of right in the undivided share of the land, the transferor receives as consideration:
 - (a) Case which is considerably less as compared to the total consideration.
 - (b) Specified built up area on the structure to be put up by the developer with covered car sheds, etc.
 - (c) Refundable caution money deposit.

Some of the agreements to transfer do not contain the value of the built up area exchanged for the land. And these "agreements to transfer" are usually not registered in the offices of the concerned sub-registrars.

It is a moot point whether the appropriate authority can afford to purchase a certain percentage of the undivided share in the land in such cases and auction it. The operation of the scheme was to that extent rendered ineffective. Many cases came to notice where transactions of the nature stated above did not come up before the Appropriate Authority, or where the Appropriate Authority felt constrained by the conditionalities involved. Some illustrative cases are given below:

Karnataka circle

(i) A transferor had leased out the ground floor of a five storeyed building on a monthly lease rent of Rs. 37,976 for an initial period of four years renewable by one more year by a lease deed dated 28 August 1989. The statement in Form 37 I filed by both the transferor/lessor and lessee was rejected as the apparent consideration in respect of this lease involving only one floor of the building was less than Rs. ten lakhs, though the market value of the entire building with all the five floors was more than Rs. ten lakhs.

The transferor had obtained the property by means of a power of attorney dated 15 June 1989 executed in his favour by all the fifteen owners of the property. By this power of attorney, the transferor was vested with full enjoyment of the property for an unlimited period and could deal with the property in any manner with the exclusion of right to sale. The power of attorney evidenced by a notary was not registered. The transfer of this property to the transferor by the owners of the property did not come up before the appropriate authority.

(ii) A vendor entered into an agreement on 12 April 1989 with a transferee for the transfer of an immovable property for a consideration of Rs. 92.40 lakhs. It was seen from the agreement that the two owners of the immovable properties who were not citizens of India had executed an irrevocable power of attorney on 26 March 1988 in favour of two persons in Bangalore. The transfer of property through irrevocable power of attorney on 26 March 1988 was not brought to the notice of the appropriate authority. The agreement dated 12 April 1989 revealed that the vendor had entered into agreement with the owners of the property on 25 August 1988, 25 November 1988, 27 December 1988, 23 February 1989 and 27 March 1989. On none of these occasions the transfer was brought to the notice of the appropriate authority.

(iii) A transferor entered into an agreement on 5 February 1990 for the transfer of an immovable property at a consideration of Rs. 32 lakhs. Under the agreement, the transferor had to complete the construction of flats and hand them over to the transferee within 24 months from the date of agreement. Even though the apparent consideration was considered low, the appropriate authority deemed it fit to issue "No objection Certificate" for the reason:

We also kept in mind the problems the Central Government may have to encounter, if property under consideration is purchased. The Central Government had to shell down the entire consideration within a month and wait for the transferors for at least 24 months to construct and hand over the flats.

Conceivably the construction and handing over of flats may take many more months and the transferor may not be at loss for the delay notwithstanding the penal clauses in the agreement. The transaction is fraught with too many imponderables and risks for the Central Government.

(iv) An individual entered into an agreement on 23 December 1989 for the transfer of an immovable property for a consideration of Rs. 83.30 lakhs. But the occupant of the building enjoyed right of occupancy for life. As her right to occupy is an encumbrance to the property, the appropriate authority chose not to interfere even though the land rate as per the agreement was only Rs. 360 per sq.ft. while sale instances in the neighbourhood ranged between Rs. 601 to Rs. 642 per sq. ft.

(v) In respect of a "going" industrial unit in an area of 9 acres and 38

guntas belonging to a manufacturing company, an agreement to transfer alongwith its operational staff, machines etc., to a transferee company was executed on 5 December 1988 as it was incurring heavy loss, for an apparent consideration of Rs. 60.00 lakhs. It was said that it would take a minimum of 2 years for the transferee company to put the unit on an economically viable base. Besides, the transfer was to be effected on a specific date to avoid complications arising from the provisions of the Insustrial Dispute Act. Even though the under statement of apparent consideration was estimated at Rs. 15.37 lakhs, no objection certificate was issued because of "exigencise of the situation and the unit is incurring heavy loss"

(vi) An area of 64,405 sqft. of land with an old bungalow there in was the subject matter of transfer between two parties. One of the condiftions of transfer was that the transferee should, at his expenses, provide within nine months an accommodation of 10,000 sqft, in the vacant portion of the land under transfer to a beneficiary of the property covered by sale for a period of 20 years on a monthly lease rent of Rs. 2,000 Despite such conditionality, the appropriate authority, Bangalore issued the purchase order in June 1988. However, the transferor challenged it in July 1988. Pending disposal of the writ on the constitutional vires of the scheme, the Supreme Court authorised the transferor to put up a bungalow at her cost and risk.

(vii) The tenants of six properties purchased by the Central Government at an aggregate consideration of Rs. 320. 16 lakhs had filed writs individually in the Karnataka High Court questioning the order of the appropriate authority for purchasing the properties without hearing them. Payments aggregating to Rs. 216.55 lakhs were made during September 1989 to the transferors under bank guarantee in respect of three properties and between April 1988 and March 1990 without bank guarantee in the remaining three cases. In the context of the comittment made by the Attorney General to the Supreme Court in Gautham's case Government interest may suffer. Incidentally, the department is not in receipt of rent from these tenants nor has the department raised any demand in this behalf. In at least four of the six tenanted properties dealt with above, the original transferees were developers/builders. In such cases, the probability of the developers having bought the right of the tenants by promising them accommodation elsewhere cannot also be ruled out.

(viii) An owner of a piece of land entered into an agreement with a developer on 21 March 1990 according to which the former consented to exchange two thirds of his interest in the undivided share of the land for one third of the built up area. In pursuance of this agreement, the developer took possession of the land. But this agreement had not come up before the appropriate authority.

Uttar Pradesh circle

In one case in Uttar Pradesh circle, a transferor entered into an agreement with a builder on 27 May 1988 under which the building was to be constructed by the developer and the transferor was to get one-third of the constructed area in the building as apparent consideration for the land measuring 35,794 sq.ft. The parties submitted Form 37-I in June 1989 without mentioning the monetary equivalent of the apparent consideration. As there were other discrepancies also, the form was treated as incomplete and was filed. Neither any order for purchase was passed nor was any no objection certificate issued to transferor. Subsequently, when in September 1989 the Form No. 37-I was submitted, the case was not considered fit for purchase in view of the inherent difficulties in exercising the right of purchase in the development agreement, in getting a bidder for the property in auction and in evaluation of monetary equivalent of the apparent consideration.

Madhya Pradesh circle

Four persons who co-owned a land admeasuring 25,552 sq.ft. with old super-structure entered into an agreement with a company in August 1986 for an apparent consideration of Rs. 17.01 lakhs at Rs. 66.57 per sq.ft. for land. On taking possession of the land, the company undertook the construction of a multistoried complex. On the basis of Form 37-I filed by the transferor on 5 July 1989, valuation officer reported on 27 July 1989 that the price of the property was grossly understated as the prevailing rate as per sale instances of May 1986 in the same locality was Rs. 97.58 sq.ft. which would work out the value of the property at Rs. 25.01 lakhs. It was however observed that as per record of the registering authority on 19 May 1989, the co-owners had already executed and got registered a deed to convey and transfer the individual proportionate share in respect of one apartment constructed on the said property. The developer was a party to the transfer deed as a transferor and had also received a consideration of Rs. 9 lakhs. The flat constructed on the land was transferred without any sale deed in respect of the land. It was ascertained from the records of the assessing officer, Indore that he had issued the tax clearance certificate on 30 March 1989 and that the transferors were not previously assessed to income-tax on capital gains or business income due to lack of co-relation between the two wings of the department.

No action on delayed submission of Form 37-I

2.01.13(a) The statements in Form 37-I are to be furnished to the appropriate authority within 15 days from the date of entering into the agreement for transfer of property. Failure makes the parties liable to rigorous imprisonment between 6 months and 2 years and levy of fine. Test check in **Madhya Pradesh, Maharashtra, Kerala, West Bengal and Gujarat circles** revealed delays in 9,5,10,104 and 32 cases ranging from

3 days to 1190 days. However, penal action was not initiated in any of these cases.

(b) Filing of defective/incomplete forms without further action.

In **Tamil Nadu circle**, 166 applications (Form 37-I) for transfer of immovable properties were rejected as defective (out of a total 954 forms received) due to defective or unclear title of the transfer, non-signing of the forms, not specifying clearly the apparent consideration, discrepancy in the extent of property, non-furnishing of particulars of transferor/transferee, etc. In one case, one application where the apparent consideration was Rs. 30 lakhs was invalidated on the grounds that there was dispute between the parties, the form was submitted belatedly and some important documents were not furnished. The transferee alleged that he had thereby lost a valuable right under the Specific Relief Act and the transferor demanded more money.

In **Delhi circle**, 240 applications were filed during the period from October 1986 to 31 March 1990 as the relevant forms were defective. It is noticed that the department did not take any follow up action in such cases. However, in five cases where the forms were not signed and verified as required under the law, were not accompanied by a copy of agreement to sell, where the apparent consideration was not mentioned in monetary terms, prosecution proceedings under Section 276 AB were initiated while in four other similar cases no action was taken. In five other cases (four where the statements were not signed, etc. and were belated) the said market values were determined by reference to the valuation cell or independently, but no action was taken though the values were found much higher than the apparent consideration.

In **Karnataka circle** of the 617 statements in Form 37-I received by the appropriate authority to end of March 1990, 148 statements were rejected on the ground that the appropriate authority could not on the basis of the particulars available to it, decide to issue either an order to purchase or a no objection certificate. The main reasons for rejection of the statements are:

- (i) clearance of Urban Land Ceiling Authority was not obtained,
- (ii) clearance from the Reserve Bank of India under FERA was not obtained,
- (iii) title to property was not clear/was questionable, and
- (iv) inconsistencies existed between the statement and the agreement to transfer.

In **West Bengal circle**, 150 statements out of 666 statements were invalidated during the last four years (1986-87 to 1989-90) as being incomplete or defective. In two cases the statements were rejected, as apparently the agreements for transfer were not legally enforceable

documents carrying a marketable and subsisting title in regard to the property free from all encumbrances.

It could not have been the intention of the Government to debar the appropriate authorities from getting the defects rectified so as to take a final decision regarding purchase of the property. Further, it is not clear as to how fulfilment of the objectives of the provisions is promoted by such filing of the forms without follow up action. Besides, the appropriate authority is required to issue the order, if the property is to be purchased within 2 months from the close of the month in which the statement in Form 37-I is received. Otherwise a no objection certificate is to be issued permitting registration of the transfer of the property. Action, as taken in these cases, does not fall under either of these two categories and is apparently beyond what was contemplated.

(c) Selection of cases for purchase:

There is no provision in law nor any guidelines of the Board in regard to the selection of cases for purchase, except that the random-sampling method would be followed. It is not clear as to (i) how the Departmental authorities are screening the cases from the details in Form 37-I for detailed enquiry (ii) how and on what basis cases are identified for reference to the valuation cell and (iii) the basis on which purchase is decided upon in some cases. Random sampling does not seem to have been resorted to, nor has there been any attempt to establish liaison with other authorities such as the State Registration authority to identify cases where the fair market value, in the opinion of the Registration authority, was higher than the declared sale consideration. Some illustrative cases are:

Maharashtra circle

A flat in prestigious locality was agreed to be transferred by an agreement dated 14 September 1985 for an apparent consideration of Rs. 30 lakhs. The appropriate authority observed that the Form 37-I and the agreement accompanying did not indicate the area of the flat and the rate at which the property was proposed to be sold. The authority, however, issued no objection certificate on 27 January 1987 without apparently going into the reasonableness of the apparent consideration of the property and without ensuring that the value of the property was not understated.

Gujarat circle

A test-check of 69 cases of valuation reports received from the valuation cell of the department upto 31 March 1990 (excluding those which were purchased by the department) in respect of cases referred to them for valuation revealed that values determined by valuation cell of the department were higher than the apparent consideration in respect of 66 properties at 1.20 per cent to 66.66 per cent. Only nine of these properties were acquired by the Government.

Delhi circle

No objection certificates were found issued in the following cases:

(i) In two cases, Form 37-I only indicated that the agreement would be entered into later and there was no subsisting agreement.

(ii) In six cases, the allotments being provisional as per allotment letters, could be stayed and there was no approved building plan etc.

(iii) In two cases the fair market values had been worked out at Rs. 419.85 lakhs and Rs. 527.60 lakhs against the apparent consideration of Rs. 322.94 lakhs and Rs. 440.15 lakhs.

(iv) In another case the transferor had not acquired the right in the property as succession certificate had not been issued.

Non-initiation of appropriate proceedings

2.01.14 Where an immovable property is situated within the local limits of the jurisdiction of more than one appropriate authority, the appropriate authority, within whose jurisdiction the office of the registering officer appointed under the Registration Act, 1908 entitled to register any document of transfer in respect of such property is situated, shall be the appropriate authority to perform the functions of the appropriate authority in relation to such property.

By an agreement dated 29 September 1986, a property consisting of land and building located in village in Pune district was transferred to one M/s K by another private company M/s KT and documents were lodged for registration in the office of the sub-registrar at Bombay. Since the appropriate authority at Bombay held jurisdiction over the registering officer at Bombay who was entitled to register any document of transfer as per the Registration Act, 1908, the transferor and the transferee filed Form 37-I on 13 October 1986 to the appropriate authority at Bombay. No action was taken on the form 37-I on the plea that the jurisdiction went with the situation of immovable property and since the property was situated outside the municipal limits of greater Bombay, no action was to be taken. It was however, noticed from item 10 of Form 37-I that the transferor and the transferee wanted the agreement to be registered at Bombay. The registering authority who registered the sale was the one within the jurisdiction of Bombay and the case fell within the jurisdiction of the appropriate authority at Bombay. In the circumstances the decision of the appropriate authority at Bombay not to take any action was not correct.

Procedure for fixation of reserve price and for auction

2.01.15 After taking vacant possession, the properties are being guarded by security guards pending disposal and delivery of possession to the purchasers. Action for sale by auction is initiated through advertisements in two English and one local dailies fixing the date of inspection of the properties and the date of auction.

In January 1987, the Board communicated to the appropriate authorities that the reserve price should be the apparent consideration plus 15 per cent thereof. In September 1988, the Board reiterated this policy. In September 1990, the Board clarified that the limit of reserve price at 115 per cent of the apparent consideration was only the minimum limit and it was left to the discretion of the Chief Commissioners of Income-tax to fix the reserve price above 115 per cent of the apparent consideration if they considered it a fit case. The employment of auctioneers on payment of commission was also allowed for the disposal of the immovable properties. Wherever reserve price was to be fixed below 115 per cent of the apparent consideration, Board's clearance was called for and the Board had emphasised that the very purpose and objective of acquiring properties under Chapter XXC would be defeated if they had to sell the properties at a rate lower than that visualized at the time of purchase. During the course of audit it was noticed that the reserve price for the disposal of the immovable properties was accordingly being fixed merely adding 15 per cent of the apparent consideration. The department thus did not rely on the fair value worked out by its Valuation Officer while fixing the reserve price though it was the basis on which purchase or otherwise was decided, nor did it take into account the element of price escalation when there was time gap in disposal of such properties.

In two cases in **West Bengal circle**, it was observed that the reserve price so fixed aggregating to Rs. 29.35 lakhs during June/December 1989 fell short of the fair market value fixed by the valuation officers totalling Rs. 34.31 lakhs and the properties were sold during February/June 1990 for a consideration of Rs. 29.63 lakhs. It was further noticed that in none of the 4 auctions conducted till the date of audit, more than two bidders came forward. The successful bidders were 1 individual, 1 trust and 2 private companies. One property whose reserve price was fixed at Rs. 3.36 crores could not attract any bidder despite several attempts in the same circle.

In **Delhi circle** out of 38 cases, the successful bidders were private companies (11), Govt. and public sector units (11) individuals (15), and group of persons (1). In three cases, the properties could not be auctioned at the reserve price fixed by adding 15 per cent to the apparent consideration. The properties were sold after reducing the reserve price as per the existing procedure followed by the department. In one case a property located on a part (500 sq. yards) of land with total area of 903 sq. yards, where apparent consideration was Rs. 1.5 crores, was purchased by the Central Government on 28 April, 1987. The valuation officer estimated its value in April 1987 at Rs. 161.32 lakhs and the appropriate authority fixed the value at Rs. 190 lakhs. The property was purchased by the Central Government at the discounted value of Rs. 142.04 lakhs. However, the title deed was for the entire property, part of which was acquired and it could not be sold even after being auctioned 6 times. In October 1987 the Government stated that sale of a-part of the plot amounted to

sub-division and in the place (Connaught Place) and its proposed extension area, sub division of plot was not permitted. Consequently, for the last nearly 4 years from June 1987 to March 1991, Govt. money of Rs. 1.42 crores was locked up. Similarly, in another case a sum of Rs. 21 lakhs paid to purchase a property is blocked for 20 months as there was no bidder for the property, whose reserve price was fixed at Rs. 24.15 lakhs, even after 5 auctions.

In Maharashtra circle out of 20 cases, in 16 there was only a single bidder to whom the property was sold. In one case the property was sold to the original transferee who also happened to be the sole bidder in that auction.

2.01.16. Commenting on the earlier scheme of Acquisition of immovable properties by the Central Government, the Public Accounts Committee in their 211th Report (Seventh Lok Sabha) (1983-84) (Para 1.18 of the Audit Report on Direct Taxes 1981-82) presented to the Lok Sabha on 30 April, 1984, observed that during the period 1979-83 in only a negligible number of cases the properties were acquired which led to the Government enhancing the ceiling limit for acquisition to Rs. 1 lakh from 1 June 1984. The Committee had also recommended the adoption of random sampling method with a view to reduce the workload and to eliminate avenues of all extraneous considerations.

In their 60th Report (Eighth Lok Sabha) (1986-87) laid on the table of both Houses of Parliament on 28 November, 1986 regarding Action Taken on the recommendations of the Public Accounts Committee in their 211th Report, the Committee noticing that the department was not able to achieve the targets as per Action Plan 1984-85 and that the pendency had actually increased, (Ministry's Action Taken Notes dated 13 November, 1985) had, while reiterating their earlier recommendations regarding expeditious disposal of the pending cases by streamlining the processes involved and also considering the possibility of introducing a statutory time limit for their disposal, desired that the Government should assess the pendency as on the date of the deletion of the existing legislation and fix a time bound programme for the disposal of the cases expeditiously.

According to information furnished by the Ministry of Finance, the particulars of intimations in Form 37-G received from the registering authorities during the six years 1985-86 to 1990-91, the number in which notices were issued, the number in which action was pending as at the end of March 1991 were:

STATEMENT 'X'

Year	No. of intimations received	No. of notices issued	No. of notices dropped	No. of cases where orders were passed	No. cases pending
1	2	3	4	5	6
1985-86	6,36,189	59,164	15,840	227	43,097

1	2	3	4	5	6
1986-87	2,43,871	61,823	54,170	87	7,566
1987-88	52,401	14,088	7,730	99	6,259
1988-89	21,617	15,356	13,620	70	1,666
1989-90	13,115	1,733	756	7	970
1990-91	5,537	998	214	—	784
Total	9,72,730	1,53,162	92,330	490	60,342

During the above period, only 92 properties had actually been taken over. The particulars of disposal of the properties acquired were not available.

The statistical data furnished by the Ministry of Finance indicated that the number of cases where action was initiated was small and out of this proceedings were dropped in a large number of cases. According to the departmental statistics the proceedings dropped were as high as 87 percent and 88 percent in the years 1986-87 and 1988-89 but was 26 percent, 55 percent, 44 percent and 21 percent in the years 1985-86, 1987-88, 1989-90 and 1990-91 respectively. In contrast, the number of cases where acquisition orders were passed was negligible. The number of properties acquired was 92 during 1985-86 to 1990-91. However, the acquisition authorities were guided by the instructions issued by the Board for summary disposal of the proceedings in cases where the apparent consideration did not exceed rupees five lakhs from 1 April, 1986 and rupees ten lakhs from 11 August, 1988.

Lack of Co-ordination with other authorities

2.01.17. Under the provisions relating to acquisition of properties as existing upto 30 September 1986, the registering authority was required to furnish a fortnightly statement to the competent authority listing out the cases of transfer on sale/mortgage for apparent consideration exceeding Rs. 50,000 /- / Rs. 1 lakh, along with copies of the instruments. This provision stands deleted from the Income-tax Act from 1 October, 1986 and there is no similar provision in the Registration Act. Consequently, as at present, there is no liaison between the Income tax authorities and the State Registration authorities except that the registering officer shall not register any document of transfer of immovable property (a) without a no objection certificate from the appropriate authority if the value of the property exceeds Rs. 10 lakhs and (b) without tax clearance certificate from the Income-tax department in favour of the transferor if the value exceeds Rs. 2 lakhs. There is, thus, no cross-check with the cases being registered. There is also no information with the Department in regard to the fair value, as distinct from the declared/apparent value, of the property as may have been adopted by the Registering authority for the purpose of computation of duty/fee.

(a) Registration of cases without no objection certificate from the Income-tax department.

In Kerala circle, in 3 cases of transfers, one to a private party and two to Government departments, where the apparent consideration exceeded Rs. 10 lakhs each, the transfer deeds were registered without obtaining the no objection certificates from the appropriate authority. It is, however, not known whether in these cases Forms— 37-I were filed. 8 such cases were also found registered in Calcutta circle. In Karnataka circle, nine cases of transfer of immovable properties between February 1988 and January 1990 came to notice of Audit where the fair market value of the properties for stamp duty purposes, as determined by the Registration Authority of the State Government, was in excess of Rs. 10.00 lakhs while the sale consideration shown in the agreement to sale was less than Rs. 10.00 lakhs.

(b) Co-ordination with reference to State Land Ceiling Acts

Tamil Nadu circle

When the landed property of a person is hit by the Tamil Nadu Land (Ceiling and Regulation) Act, 1978, and the excess land is acquired by the Government, the owner is paid a compensation based on the zonal value determined under the Act, which is lower than the market value of the property. As provisions of Chapter XXC will prevail over provisions of Tamil Nadu Land Ceiling Act if a property is purchased by the appropriate authority, the value mentioned as apparent consideration would be payable to the transferor and not the compensation under the Land Ceiling Act which would normally be lower.

During the year 1986-87, the department had purchased eight properties without obtaining clearance from the Tamil Nadu Urban Land Ceiling authorities and paid the apparent consideration specified in the agreements. In one case, the department had purchased a property for an apparent consideration of Rs. 1.40 crores and sold the same for Rs. 2.60 crores in public auction. Subsequently it was pointed out by the Commissioner and Secretary to the Government of Tamil Nadu that the State Government had ordered acquisition of excess land measuring 686 sq.mt. in the above property and remarked as under :

“For excess land coming under the purview of Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, the Income-tax department pays a huge price as against zonal value determined under Tamil Nadu Land (Ceiling and Regulation) Act, thereby incurring loss to Central Government”.

Thereafter a copy of the order by the appropriate authority for the purchase of immovable property was being forwarded to the concerned registering authority also with a request to specify whether the property purchased was hit by the Urban Land Ceiling Act. It was mentioned therein that in case no communication in this regard was received from the Urban Land Ceiling authorities within 15 days of service of the letter enclosing the order issued, it would be considered that the property was not hit by Tamil Nadu Urban Land Ceiling Act. The Urban Land Ceiling

authorities were contesting that it would take a month for them to send a report as original documents, that too in different sections, were to be verified in each case. In one case, the report was received after 9 months of issue of purchase order. This matter has not been sorted out and as the payment towards apparent consideration would require to be made before the end of subsequent month of issue of purchase order under section 269 UD, the Income-tax department was going ahead as per the presumption embodied in the letter to the Urban Land Ceiling authorities and in a number of cases final payment of apparent consideration was made without obtaining formal clearance.

Karnataka circle

(i) Almost in all the cases of transfer of immovable properties that came up to the appropriate authority, Bangalore, clearance of the Urban Land Ceiling Authority was not obtained for their transfer. In a considerable number of cases the appropriate authority rejected the statements on the ground that these were nonest in law, premature, defective and invalid, but in cases where it chose to intervene, the appropriate authority had endorsed a copy of its purchase order to the State Government with a request to intimate whether the property was hit by the Urban Land Ceiling Act. Clearance from Urban Land Ceiling Authority is still awaited in 12 cases of transfers involving a payment of Rs. 636. 97 lakhs.

(ii) In one case where the Central Government had purchase the property by paying the apparent consideration of Rs. 108.47 lakhs on 29 June, 1990 (IV floor in a building having four floors), the State Government informed the authority on 5 September, 1990 that the property was hit by the Urban Land Ceiling Act, 1976 and the maximum compensation payable for the portion of the property purchased by the Government was just Rs. 50,000 as against Rs. 108.47 lakhs paid by the Government to the transferor.

Uttar Pradesh circle

Under the Urban Land Ceiling Act, vacant sites or immovable properties having surplus land cannot be transferred except with the prior approval of the authority constituted under the Act. In the absence of liaison with the State Government authorities the appropriate authority has to take into account the risk element in deciding the adequacy or the reasonableness of the apparent consideration for making pre-emptive purchases.

In one case, free hold land measuring 4 bighas, 14 biswas and 15 biswansi with pucca double-storeyed farm house was agreed to be sold for Rs. 15.37 lakhs. On receipt of Form 37-I, the Valuation Officer, on reference to him, estimated the fair market value at Rs. 21.14 lakhs. The appropriate authority passed an order for purchase of the property, but clearance was not obtained from the land ceiling authorities. Subsequently, a communication was received from the land ceiling authorities that since

- no evidence of agricultural operations being carried on was produced, the competent authority was considering action under Section 8(4) of the said Act and therefore till final decision, the appropriate authority was requested not to allow transfer of the said land. The case is now sub-judice. The transferee filed writ petition against the order of the appropriate authority and obtained stay order. The transferor moved application for vacation of the stay order.

Lack of coordination with other wings of the Income tax Department

2.01.18 Test audit revealed that there was hardly any co-ordination and mutual exchange of information between the various functionaries of the Income tax department, the registering officer and the appropriate authority. The appropriate authority did not also pass on copies of his orders on the valuation reports estimating the market values of properties under consideration for purchase to the assessing officers. The officers issuing tax clearance certificates likewise did not send copies thereof to the appropriate authority.

Madhya Pradesh circle

- A private limited company at Bombay executed an agreement on 19 April, 1988 for sale of 1,30,680 sq. ft. of land at Rs. 15.30 per sq.ft, with superstructure built thereon. Out of the total consideration of Rs. 20 lakhs, the sum of Rs. 19 lakhs was paid and physical possession of the land handed over to the transferee on the date of agreement on leave and licence basis at Rs. 1500 per month, being the interest on the balance of Rs. 1 lakh to be paid at the time of registration. Form 37 I was filed on 30 June, 1989. It is not known whether the appropriate authority passed on this information to the assessing officer at Bombay.

In another case, the owners of a land and structure (70361 sq. ft) entered into an agreement on 14 August 1986 for an apparent consideration of Rs. 55 lakhs, out of which Rs. 53.35 lakhs was paid by post-dated cheques (17 February 1986 and 30 June 1987) which were handed over on the date of the agreement and the balance was paid as brokerage to the brokers. On the basis of Form 37 I filed on 5 July 1989 by the transferors, the valuation officer certified on 31 July 1989 that value of the property had been grossly understated. The particulars of PAN/Assessment ward were not available in Form 37 I and no correlation was possible to verify the action taken by assessing officers.

- In a third case, the co-owners entered into an agreement on 13 September, 1986 for sale of 1 lakh sq.ft. of land for a total consideration of Rs. 114 lakhs including Rs. 8 lakhs to be paid to get the tenants evicted. According to the agreement, Rs. 71 lakhs was to be paid at the time of the agreement and of handing over possession. Form 37 I was filed on 5 July 1989 but it did not contain the PAN/assessing ward, etc., and so no cross-verification was possible.

In yet another case, a theosophical society entered into an agreement on 28 March 1985 for sale of 50,000 sq.ft. of land for an apparent consideration of Rs. 45.51 lakhs (Rs. 3.50 lakhs advance paid) and possession was handed over to a construction firm in September 1985. Form 37 I was submitted on 3 August 1989, but as per sale instance of July 1985 the selling rate prevailing in the same locality was Rs. 200 per sq.ft. The fair market value of the property would not have been less than a crore of rupees and the value shown in the Form 37 I was grossly understated. It is not known whether this information was passed on to the concerned assessing officers for appropriate action.

Delhi circle

Out of 28 cases test checked, in 13 cases there was no exchange of information between the appropriate authority and the assessing officers where the transferors and transferees are assessed. Out of the other 15 cases where purchase orders were found, 13 cases where payments were made to the transferors were referred to the concerned assessing officers to intimate outstanding tax liability.

West Bengal circle

A review of the assessment records of nine transferors belonging to high income group or large industrial houses revealed that in five cases the assessee had not disclosed information about the sale of properties or the gains arising therefrom and the assessing officer also had made no enquiries. In the four other cases where the gains were disclosed, no details were filed by the assessee nor called for by the department. On a correlation with the market values determined by the valuation cell, it was noticed that there was escapement of gift tax of Rs. 8.69 lakhs in two cases and income-tax of Rs. 12.75 lakhs in one case.

Effect of lack of coordination on tax liability

2.01.19. Under the Income-tax Act, 1961, with effect from assessment year 1964-65, where a capital asset is transferred to a person who was directly or indirectly connected with the assessee and the Income-tax Officer had reason to believe that the transfer was effected with the object of avoidance or reduction of income-tax liability to capital gains, the full value of the consideration for the transfer must be taken to be the fair market value of the capital assets on the date of transfer. Further, if in the opinion the Income-tax officer the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeded the full value of the consideration declared by the assessee in the instrument of transfer by 15 per cent or more of the value so declared, the full value of the consideration for such capital asset will be taken to be its fair market value on the date of transfer. In terms of the provisions of the Gift-tax Act, where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property on the date of transfer exceeded the value of the consideration shall be treated as gift made by the transferor.

- In July 1976 and September 1980, the Central Board of Direct Taxes had clarified that where the provisions regarding under-statement in transfer of immovable properties for income-tax were invoked, proceedings should also be initiated for purposes of the gift-tax. In September, 1981, the Supreme Court held that only either of these provisions would be applicable and that the provisions of tax liability on account of capital gains could not be invoked without discharging the burden of proving that the actual consideration received was more than what was declared. In this context, the provisions relating to capital gains were deleted from 1 April 1988. In March 1985, after four years of the Supreme Court judgement, the Central Board of Direct Taxes also clarified that in respect of *bona fide* transactions for inadequate consideration, the provisions of the gift-tax would be attracted and transactions where there was understatement of actual consideration, the provisions of capital gains would be applied.

Earlier in May 1984, the Board had instructed that proceedings for gift-tax might be initiated alongwith the proceedings for acquisition against the transferor. It was further clarified that even in cases where the competent authority had initiated or proposed to initiate action for acquisition of properties, intimations regarding the proceedings should be communicated to the Gift-tax officers having jurisdiction over the transferors, with a note to that effect in the acquisition file. In November 1985, the Board on the advice of the Ministry of Law, instructed that the proceedings for acquisition and gift-tax were mutually exclusive and only in case of dispute action would be initiated on protective basis. However, gift-tax proceedings might be initiated in cases where the market value was higher than the consideration that actually passed hands.

In view of the provisions explained above, it is imperative in the interest of revenue that the respective assessing authorities have access to and/or kept advised of fair market value in respect of properties so that proceedings for levy of capital gains tax/gift tax/wealth tax may be initiated, as warranted. However, it was seen in audit that there was no operative system of liaison between the assessing authorities on the one hand and the appropriate authorities/State registration authorities/competent authorities on the other. Consequently even in respect of cases where the latter authorities had determined the fair market values at substantially higher levels than the apparent consideration, proceedings for levy of capital gains/gifts etc. tax were not initiated. The position in respect of 749 cases noticed in audit is as below:

Sr. No.	Circle	No. of cases	Apparent consideration	Fair market value	Difference (In lakhs of rupees)
1	2	3	4	5	6
01.	Tamil Nadu	48	768.11	1,117.96	349.85
02.	Delhi	97	1,430.15	2,066.65	636.50

1	2	3	4	5	6
03.	Madhya Pradesh	335	584.26	1,503.26	919.00
04.	Karnataka	27	116.17	170.11	53.94
05.	Uttar Pradesh	103	627.34	1077.56	450.22
06.	Rajasthan	86	291.52	550.12	258.60
07.	Bihar	5	39.44	64.06	24.62
08.	Andhra Pradesh	48	101.53	138.77	37.24
		749	3,958.52	6,688.49	2,729.97

Maintenance of Register

2.01.20 The scheme for pre-emptive purchase was introduced since 1 October 1986. Though more than 4 years have elapsed, the Central Board of Direct Taxes has not yet laid down any procedure, prescribing the maintenance of registers/records for watching receipt and disposal of statements in Form 37-I, and for keeping track of further action/developments in respect of properties for which purchase orders are issued including the date(s) of serving of notice to the transfers/transferees/persons in occupation of the premises, payment(s) to be made and ensuring physical takeover of the property within the prescribed time limit etc., details of cases pending in the court for their effective pursuance, details of properties that need to be put to auction, maintenance expenditure there against, numbers and names of bidders in each auction etc. In the absence of standardised procedure, the records as available in different circles are not complete nor uniform. On test check, it was found in Maharashtra, West Bengal and Delhi circles that while certain registers have been devised and are being maintained, they have gaps and complete information about progress of cases in hand is not available.

APPENDIX II

Observations and Recommendations

Sl. No.	Port No.	Ministry/ Deptt. Con- cerned	Observations/Recommendations
1	2	3	4
1.	75	Finance (Revenue)	In order to check evasion of tax and curb proliferation of the unaccounted money, a number of anti tax evasion avoidance measures have been taken by the Government from time to time by incorporating suitable provisions in the direct tax laws. Legislation was introduced in Direct Tax statute as early as in 1964 to subject the difference between the actual consideration received and the value declared in the transfer documents to capital gains and the difference between the market value and the actual consideration for transfer to gifts tax. The Direct Taxes Enquiry Committee popularly known as Wanchoo Committee set up in 1970, recommended incorporation of a provision in law for acquisition of properties in respect of which the consideration declared in the instrument of transfer was not truly stated or was understated as compared to the fair market value of the property on the relevant date under certain circumstances. The legislation was accordingly amended w.e.f. November, 1972 empowering the Central Government to acquire immovable properties of value above Rs. 25,000 in respect of which consideration for the transaction was under-stated. The applicability of these provisions was further widened with effect from July, 1982 to cover transfer of flats in co-operative Societies and companies, part performance sales under the Transfer of Property Act, 1982 and long term leases. For purposes of administrative convenience the monetary limit was raised to Rs. 1 lakh from June 1984.

1	2	3	4
			<p>Subsequently, the long term fiscal policy announced in December, 1985 noted the substantial scope for litigation and harassment in the scheme of acquisition of immovable properties without producing commensurate results. In the wake of this the existing scheme of acquisition of immovable properties by government was discontinued in relation to the transfer of properties after 30 September, 1986 and a new provision was inserted w.e.f. 1 October, 1986 conferring on the Government a pre-emptive right to purchase immovable properties valued at above Rs. 3 lakhs (raised to Rs. 10 lakhs under Government notification). The avowed objectives of this scheme are to counter evasion of tax through under statement of the value of immovable properties in transfer deeds and to check proliferation of black money in real estate transactions. These provisions which were initially applicable in the four metropolitan cities viz. Delhi, Bombay, Madras and Calcutta were subsequently extended to 24 other cities through notifications issued in 1987, 1989 and 1991. The provisions enabled the Government to purchase properties already offered for sale and no solatium was payable since no compulsory acquisition was involved the purchase properties were to vest in the Government free from all encumbrances. The Committee request to find that as discussed in the succeeding paragraphs the scheme has by and large not been able to achieve the desired objectives.</p>
2.	76	Finance (Revenue)	<p>The earlier scheme of acquisition of properties by Central Government was applicable to the entire country. However, the scheme of purchase of properties by central Government which was initially introduced in 4 metropolitan cities of Bombay, Delhi, Calcutta and Madras w.e.f. 1.10.1986 was subsequently extended to cover 24 more cities between 1.10.1987 and 1.4.1991. The scheme is stated to have been restricted to specified cities where sufficiently large number</p>

1	2	3	4
			<p>of transactions of immovable properties with consideration exceeding Rs. 10 lakhs are practically noticed to be taking place. Extension of the scheme to the entire country was not considered by the Ministry as the constitutional validity of the provisions was under challenge in the court of law. According to the Ministry, the extension of the scheme to the entire country would now be examined and a decision to that effect would be taken in the wake of the Supreme Court judgement deciding its constitutional validity. The Committee are of the view that entention of the scheme only to the specified cities, on the one hand result in similar transactions outside these cities remaining beyond the scope of the scheme and on the other it tends to undermine the principle of equity under the scheme. The committee hope that the question of extending the coverage of scheme will now be considered seriously by the Ministry.</p>
4.	77.	Finance (Revenue)	<p>The Committee further note that even in Limited cities where the scheme under chapter XXC is applicable, the provisions for pre-emptive purchase are activated only where the stated consideration for the transfer of property in the agreement entered into is above Rs. 10 lakhs. There has been no move to readjust the financial limit, having regard to the magnitude of operation of the scheme etc. and keeping in view the shift in real estate prices. Further, value has been prescribed as the apparent consideration of the relevant property. Consequently, where the stated consideration of a property is deliberately kept below the prescribed limit, the case authentically goes out of the ambit of the scheme and unfortunately no mechanism has been prescribed to detect such cases of wilfully escaping from the purview of the scheme leading to tax evasion and proliferation of black money. In the case of Abdus Samat Haji Adaim Kantharia and others vs.</p>

1	2	3	4
			<p>Union of India and other, the Bombay High Court had held that auction cases would not fall within the purview of the scheme of purchase of properties as there would be no agreement between the parties in such cases. Thus the auction cases also remain outside the purview of the scheme. The Committee find that in some of these cases, statement in Form 37-I were being submitted to the Appropriate Authority who also issued no objection certificates while some did not come up at all before the Appropriate Authority. The Finance Secretary informed the Committee during evidence that it was not considered prudent to plug a number of loopholes noticed in the scheme such as deliberately keeping the stated consideration below the prescribed limit, sub-dividing the property and selling a part for less than Rs. 10 lakhs etc. as the main issue was pending in the Supreme Court. The Committee are not convinced with this argument and since that the Supreme Court judgement has been delivered necessary steps should be initiated. The Committee recommend that suitable provisions should be made to plug these loopholes in consultation with the Ministry of law, urgently.</p>
4.	78.	Finance (Revenue)	<p>Another disquieting feature in the working of the scheme has been the large scale litigation as a result of the implementation of the scheme under Chapter XXC. The Committee find that as on 31st December, 1992, 340 out of 872 cases in which purchase orders were passed, have ended in litigation and of these 340 petitions as many as 117 were over 3 years old. 303 writ petitions related to challenge of constitutional validity of the scheme and 37 writ petitions were pending on other grounds. The Committee are constrained to observe that the Government have found themselves helpless to avoid litigation on grounds other than that of constitutional validity or to have such cases settled expeditiously despite the provisions which make the orders of the Appropriate Authority final and conclusive, not to be questioned in any</p>

1

2

3

4

proceedings under this Act or any other laws. The aforesaid statistics reveal that this scheme too suffers from voluminous paper work and litigation, despite having been limited in scope. The Supreme Court has now upheld the validity of the scheme. The Committee recommend that the existing scheme should be reviewed in the light of the Supreme Court judgement and the other reasons for widespread litigation with a view to take remedial steps to overcome the existing lacunae so as to minimise litigation. The Committee would like the concrete steps be taken in this regard.

5. 79. Finance
(Revenue)

The Supreme Court in its judgement delivered on 17.11.92 has upheld the Constitutional validity of the scheme which was challenged, inter-alia, on the ground that it infringes the right to buy/sell property. The basic decisions of the court inter-alia are (i) both the intending buyer and the seller should be given the opportunity to be heard before ordering compulsory purchase (ii) reasons for making the purchase should be communicated to the affected parties (iii) the purchase made by the Government would be subject to encumbrances and lease hold interest to the extent these are not agreed to be discharged by the vender. While the clause free from all encumbrances has been struck down the Supreme Court has held that monthly tenancies would continue even after an order for purchase by the Central Government has been made by the Appropriate Authority concerned but such tenants would lose the protection under the Rent Protection Laws, because such laws are not made applicable to properties owned by the Central Government with the result that their tenancies could be terminated by the Central Government. Although the judgement is to have only prospective application, the Court has directed that in respect of pending litigation cases the parties are required to be given a hearing. The Committee have

1	2	3	4
			<p>been informed by the Ministry that the implementation of the Supreme Court judgement is not likely to create any problem for the Appropriate Authorities. According to the Ministry the only administrative change required is the strengthening of the valuation set up attached to the Appropriate Authorities. Further, the time limit for passing the order is proposed to be extended from two months (as directed by the Supreme Court) to three months from the end of the month in which Form 37-I is filed perhaps necessitated from the practical experience gathered while handling the cases in the wake of the Supreme Court judgement. In order to give legislative shape to the ruling of the Supreme Court, some amendments in the provisions of Chapter XXC have been proposed in the Finance Bill 1993. For instance, it has been proposed that the holder of a bonafide lease or encumbrance can continue to remain in possession of the property if in term of the agreement for transfer, he is eligible to continue to be in possession of such property even after the transfer. It is pertinent to note in this regard that the Supreme Court has held that monthly tenancies if existing in the purchased property could be terminated by the Government as rent protection laws do not apply to properties owned by the Central Government. The Ministry have contended that it may not be necessary to take action under the Public Premises Act 1971 to get the vacant possession of the property as Government can always sell the property along with such bonafide tenants on 'as is where is basis'. The Committee, however, feel that to sell the properties again with the same tenants may be fraught with various difficulties and necessary steps be taken to ensure that the <i>bona fide</i> interests of the Government and the tenants are not jeopardised. The Committee also emphasize that with a view to safeguard the Government interests in the scheme, all remedial steps necessitated by the Supreme Court</p>

1	2	3	4
			judgement should be taken urgently in consultation with the Ministry of Law.
6. 80	Finance (Revenue)	<p>Under Section 269 UC, the agreement for transfer of immovable property exceeding Rs. 10 lakhs between the transferer and the transferee is required to be reduced to writing in the form of a statement in the prescribed Form (37-I) and furnished to the Appropriate Authority within 15 days. The Committee are unhappy to find violation of this provision, in Madhya Pradesh, Maharashtra, Kerala, West Bengal and Gujarat circles where the submission of such statements to the Appropriate Authority has been delayed by 3 to 1190 days. The Committee are surprised to find that no penal action was initiated in any of these cases even though parties were liable to rigorous imprisonment and levy of fine. The Committee would impress upon the Ministry to take effective steps to induce the parties to submit the required statements within the prescribed period of 15 days and to take penal action in all such cases where the submission of the required statement is unduly and intentionally delayed.</p>	
7. 81	Finance (Revenue)	<p>The Committee further note that the Appropriate Authority, on receipt of the statement in Form 37-I is required to issue within 2 months from the month end in which the Form is received either the preemptive purchase order or the no objection certificate on the strength of which registration of the sale deed would materialise. Audit scrutiny has revealed that the Appropriate Authority in quite a large number of cases failed to take either of the aforesaid actions simply on the ground that on scrutiny these forms were found defective or incomplete. While admitting this fact the Ministry have tried to explain the inaction by saying that this problem rose because law on this point was not clear and the Appropriate Authority took a view that after the Form 37-I was 'filed' by it, without taking any action on the ground that the Form is defective incomplete, the concerned</p>	

1	2	3	4
			<p>parties would re-submit a fresh Form after removing the defects to seek a 'No Objection Certificate', since without No Objection Certificate, transfer of the immovable property covered by Chapter XXC was not possible. This explanation is hardly convincing and decision of the Supreme Court in the case of Tanvi Trading and Credits (P) where the Court has held that the Appropriate Authority is required either to pass purchase order or to issue the no objection certificate. The Committee are unhappy over the inaction on the part of the Appropriate Authorities in all such cases. As the said decision of the Supreme Court is stated to have been communicated to all the Appropriate Authorities, the Committee hope that all the statements in Form 37-I would in future be disposed of as required under the law.</p>
8.	82	Finance (Revenue)	<p>The Committee are also concerned to note that there has been considerable difficulty in handling cases of leases sub-lease or power of attorney, of industrial undertakings or going concerns and of agreements for development of plots and construction of high-rise buildings. Often, some of the conditions of the agreements deterred the concerned Appropriate Authorities from interfering in the transactions. According to the Ministry, the Appropriate Authority, as per instructions to them, have avoided passing of purchase orders incases involving lease, sub-lease unless the apparent consideration has been noticed to be grossly under-stated. Any action from legal angle in such cases was not considered as per the advice of Law Ministry since the constitutional validity of the Chapter XXC was pending before the Supreme Court. The Committee feel that these problems were not entirely related to the constitutional validity of the provisions and devising of suitable means to overcome the difficulties in such cases should have been considered much earlier and the Committee deprecate the lack of action on the</p>

1

2

3

4

part of the authorities thus far. It has now been proposed in the Finance Bill, 1993 to give a right to the Appropriate Authority to declare any encumbrance or lease hold interest to be void where it has been created with a view to defeating the purpose of this chapter. The Committee hope that with this amendment, the Appropriate Authority would not feel constrained to act in the aforesaid cases. The Committee also expect the Ministry to examine the feasibility of amending the existing law to bring in the ambit of the scheme the case of power of attorney as the power of attorney executed generally does not mention the apparent consideration and is also not required to be registered.

9. 83

Finance
(Revenue)

The Committee are also concerned to note that there have been quite a few cases where certain proposals covered by Chapter XXC have been registered by the Registering Authorities even without the production of a No Objection Certificate from the Appropriate Authorities inspite of the fact that production of the no objection certificate is a legal pre condition for such registration. The Committee are surprised over the justification for this wrong action adduced by the Ministry that none of these cases have been found to be having any potential where the purchase order could have been made if the transaction had come before the appropriate Authority. They are of the opinion that the action taken by the Ministry in requesting the concerned Registration Authorities to be more careful in this regard would not suffice. There ought to be some legal provision or an inbuilt mechanism to ensure that the statements in Form 37-I are filed without fail in all liable cases and no property covered by Chapter XXC is registered without a No Objection Certificate from the Appropriate Authority. The Committee would also like the Department to examine the feasibility of making it mandatory for the Registration Authority to furnish a fortnightly

1	2	3	4
			statement to the Appropriate Authority listing out the cases of transfer for apparent consideration exceeding Rs. 10 lakhs so that cases being registered could be cross checked at their end by the Appropriate Authority. The Committee would like to be apprised of the concrete steps taken in this regard.
10. 84	Finance (Revenue)		<p>The Committee are informed that for auction of purchased properties the reserve price is to be the apparent consideration plus 15 per cent thereof. This criteria is stated to have been fixed as the purchase order is to be made only if the market value is at least 115 per cent of the apparent consideration. Although the Board has clarified that the limit of the reserve price at 115 per cent of the apparent consideration was only the minimum limit and it was left to the discretion of the Chief Commissioners of Income Tax to fix the reserve price above 115 per cent of the apparent consideration if they considered it a fit case, audit scrutiny has revealed that the reserve price was invariably being fixed by merely adding 15 per cent of the apparent consideration. Even though the properties are sold in open auction, the Committee feel that the fixation of reserve price usually at the minimum prescribed limit is likely to be taken advantage of by auctioneers by forming cartels etc. It is, therefore, deemed imperative that the reserve price fixed should be reasonable so as to discourage the possibility of indulging in unscrupulous activities by the auctioneers at the cost of national exchequer. As the value of the property is assessed both by the valuation wing and the Appropriate Authorities separately at the time of passing purchase order, the Committee consider it very necessary that reserve price should be fixed keeping in view these two separately compiled figures and also taking into consideration the element of price escalation in case there is time gap in disposal thereof.</p>

1	2	3	4
11.	85	Finance (Revenue)	<p>The Committee are also dismayed to find that due to lack of coordination with the State Urban Land Ceiling Authorities, the Department has passed purchase orders even in cases hit by the Land Ceiling Act, and consequently the transferors were unduly benefitted by paying substantially higher amounts by the Department, as compared to what they would have obtained from the State authorities as compensation. The Ministry have conceded that some cases have been noticed where either parties to the transaction did not indicate the applicability of Urban Land Ceiling Act or the concerned State Government Authorities did not supply the information to the Appropriate Authority within the prescribed time limit, for passing of the purchase order. The Committee feel that it should not be possible for the Appropriate Authority to collect all the relevant information during the course of statutory hearing to be extended to the parties as per Supreme Court decision. The Committee feel that it should also not be difficult now to get such information from the State Government Authorities as the time limit for passing the purchase order is proposed to be extended from two to three months, from the end of the month in which Form 37-I is filed. The Committee would emphasize the need for ensuring full coordination between all the authorities so that the private parties do not derive any additional gratuitous benefit at the cost of national exchequer.</p>
12.	86	Finance (Revenue)	<p>The Committee are extremely unhappy over the utter lack of coordination and mutual exchange of information between the various functionaries of the Income Tax Deptt., the Registering Office and the Appropriate Authority. Audit scrutiny has revealed a number of cases where the Appropriate Authorities failed to pass on copies of its orders on the valuation report estimating the market values of properties under consideration for purchase to the</p>

1	2	3	4
			<p>assessing Officers. Similarly the Officers issuing tax clearance certificates also failed to send copies thereof to the Appropriate Authority. The Committee regret to observe that in respect of cases where the Appropriate Authority/State registering authority had determined the fair market values at substantially higher levels than the appropriate consideration, proceedings for levying of Capital gains/gift tax etc. were not initiated. 749 cases in 8 different circles have been detected by audit scrutiny where fair market value amounted to Rs. 66.89 crores against the apparent consideration shown to the extent of Rs. 39.09 crores. The Committee are informed. That long term action plan for survey for five years 1990-91 to 1993-94 has prescribed code No. 201 requiring CIB units to collect information available in Form 37—1 received by Appropriate Authorities on regular basis. The Committee desire that this action plan should be evaluated to find out whether it has achieved the desired objective and the result thereof apprised to them. The Committee would also like the Deptt. to ensure that there is no short/non levy of capital gains and/or gift tax due to lack of coordination between various functionaries of the Deptt. and State Registering Authority.</p>
13	87	Finance (Revenue)	<p>Another area of concern for the Committee is the fact that Board have not evolved detailed guidelines to regulate the scheme. Only Departmental instructions have been issued from time to time. Certain guidelines decided in a meeting of the Appropriate Authorities held on 17 & 18 October, 1986 are being followed. Strangely enough, failure to issue detailed guidelines has been justified by the Ministry by saying that the provisions are being administered by 3 members of Appropriate Authority; of which 2 are of the rank of Commissioner of Income tax to the Central Govt. and the third Member is of the rank of Chief Engineer to the Central</p>

1	2	3	4
			<p>Government. In view of this the Ministry has not felt it necessary to prescribe registers containing specific proformae for keeping a watch over the statutory functions performed by the Appropriate Authorities. The Audit Para has highlighted several problems in their day to day functioning which the Appropriate Authorities have not been able to overcome. The Committee would impress upon the Ministry the need for evolving detailed guidelines so as to enable the Appropriate Authorities not only to take prompt but also uniform decisions in all cases. The fact that strict time limits are incorporated in the chapter make it all the more imperative that maintenance of proper registers and proformae are prescribed to keep strict vigil on all pending action. The Committee also desire that the Board should call for a periodical report from the Appropriate Authorities regarding their activities indicating <i>inter-alia</i> therein the details about no objection certificates issued, purchase orders passed, properties purchased and sold, litigation cases etc. so as to undertake the desired monitoring at their level with a view to ensuring smooth & effective functioning of the scheme.</p>
14. 88	Finance (Revenue)	<p>The Committee have been informed that under the previous scheme of acquisition of immovable properties under Chapter XXA, out of one and a half lakh cases examined by the authorities, 7300 cases only were considered fit for passing final orders. But ultimately, the authorities were able to issue final orders in 91 cases and ended up acquiring just 15 properties. Of a total value of Rs. 35 lakhs only. According to the Ministry of Finance, litigation process in the old scheme was so complicated that they were handicapped to take any action. With a view to overcome the difficulties experienced in the old scheme which was discontinued after 30 September, 1986, the new provision was in</p>	

1	2	3	4
15. '89	Finance (Revenue)	<p>serted with effect from 1 October, 1986 conferring on the Government a pre-emptive right to purchase immovable properties. The Committee are concerned to find that the authorities concerned have failed to achieve better results even in the operation of the new scheme during the last six and a half years. Out of 22311 cases processed under this scheme, purchase orders were passed in 812 cases. Of these 812 cases, 430 properties with apparent consideration of Rs. 228 crores were sold, yielding a profit of only Rs. 60 crores. The Committee are further distressed to find the negative point in respect of 79 cases in which the authorities have already paid Rs. 43 crores and the relevant properties are yet to be sold. The Finance Secretary conceded during evidence before the Committee that it is an administrative delay and it is a question of speeding up the process. The Committee take a serious view of this administrative delay and emphasize that the process of disposal of purchased properties should be expedited as huge amounts of public money has been unnecessarily locked up. The Committee would also stress the need for prescribing a statutory time limit for disposal of purchased properties under this scheme. Having regard to the objective of the new scheme as a deterrent to the widespread operation of black money, the Committee believe that more intensive scrutiny of the cases to ascertain the true market prices was also called for so as to identify the real tax evaders. This aspect should also be suitably taken care of in future.</p> <p>The preceding paragraphs abundantly establish that the scheme of purchase of properties by the Central Government has failed to achieve the desired results on the following counts:</p> <ol style="list-style-type: none"> (i) the scheme is beset with litigation despite a specific provision denying any right to appeal. (ii) the scheme has no safeguard against delib- 	

1	2	3	4
			<p>erate understatements in apparent consideration below the limit prescribed under law either individually or by splitting or in not filing the prescribed statement (37 I) in violation of the statute.</p> <p>(iii) there has been absence of principled selection of cases for purchase, which tended to erode the objectivity of the scheme.</p> <p>(iv) the scheme has failed to effectively tackle cases of auction sales, transfers through builders/developers etc.</p> <p>(v) Absence of appropriate guidelines and procedures.</p> <p>(vi) Inexcusable delay in the disposal of purchased immovable properties.</p> <p>(vii) The scheme since its inception has never been reviewed to know its effectiveness with a view to effect necessary improvements.</p> <p>The Committee take a serious view of lack of coordinated and effective approach on the part of the Ministry of Finance in the implementation of the scheme due to which they failed to achieve the avowed objectives of countering evasion of tax through understatement of the value of immovable properties in the transfer deeds and checking the proliferation of black money. The Committee recommend that comprehensive and effective steps should now be taken immediately in the light of their recommendations made in this Report and the recent Supreme Court judgement on the constitutional validity of the scheme to remove all the lacunae which have thus far impeded the smooth and effective functioning of the scheme. The Committee would like to be apprised within six months the concrete steps taken in this regard.</p>

1	2	3	4
			<p>to how fulfilment of the objectives of the provisions is promoted by such filing of the forms without follow up action. Besides, the appropriate authority is required to issue the order, if the property is to be purchased within 2 months from the close of the month in which the statement in Form 37-I is received. Otherwise a no objection certificate is to be issued permitting registration of the transfer of the property. Action, as taken in these cases, does not fall under either of these two categories and is apparently beyond what was contemplated.</p> <p>(c) Selection of cases for purchase:</p> <p>There is no provision in law nor any guidelines of the Board in regard to the selection of cases</p>