ONE HUNDRED AND EIGHTEENTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1982-83)

(SEVENTH LOK SABHA)

INCOME TAX, WEALTH TAX AND ESTATE DUTY

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

[Action taken on 51st Report (7th Lok Sabha]

Presented in Lok Sabha on .....

Laid in Rajya Sabha on .....

LOK SABHA SECRETARIAT
NEW DELHI

August 1982/Sravana 1904 (S)

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(1982-83)

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3. Shrimati Vidyavati Chaturvedi
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1. Shri T. R. Krishnamachari—*Joint Secretary (C)*
2. Shri K. C. Rastogi—*Chief Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee do present on their behalf this 118th Report on action taken by Government on the recommendations of the Public Accounts Committee contained in their 51st Report (7th Lok Sabha) on Income Tax, Wealth Tax and Estate Duty.

2. The Committee have reiterated the need for keeping close co-ordination with the Reserve Bank of India and the Department of Economic Affairs so as to make sure that income from export of technical know-how is actually brought into India in convertible foreign exchange before any relief is allowed to the assessee under Section 80-0. The Committee have also emphasised the need for devising an effective mechanism in the Central Board of Direct Taxation so that data/information on such important matters can be concurrently maintained and proper monitoring/evaluation of the scheme becomes easy.

3. Recalling the recommendation made earlier about the need for a periodical and systematic review and evaluation of the concessions given under Sections 80-MM and 80-0 to ensure that the underlying objectives were in fact achieved, the Committee have further asked the Department to consider the question whether the concessions under Section 80-MM should at all be allowed to the subsidiaries of foreign companies in India.

4. On 11 June '82, the following action taken sub-committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Public Accounts Committee in their earlier Reports :

Shri Satish Agarwal—*Chairman*

Shri K. Lakkappa
Shri G. L. Dogra
Shri Sunil Maitra
Shri Bhiku Ram Jain
Shri Kalyan Roy

} *Members*

5. The action taken sub-Committee of the Public Accounts Committee, 1982-83 considered and adopted the Report at their sitting held on 20 July, 1982. The Report was finally adopted by the Public Accounts Committee on 3 August, 1982.

6. For reference facility and convenience, the recommendations and observations 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 the Appendix to the Report.

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

SATISH AGARWAL,
Chairman,
Public Accounts Committee.

NEW DELHI;
August 3, 1982
Sravana 12, 1904(S)

CHAPTER I

REPORT

1.1. This Report of the Committee deals with the action taken by Government on the Committee's recommendations and/or observations/contained in their 51st Report (Seventh Lok Sabha) on Paragraphs 29 (ii), 29(i)(a), 56(iii), 65(ii), 68(iii) and 83(iii) of the Report of the Comptroller and Auditor General of India for the year 1978-79, Union Government (Civil), Revenue Receipts, Volume II, Direct Taxes relating to Income Tax, Wealth Tax and Estate Duty.

1.2. The Committee's 51st Report was presented to the Lok Sabha on 30 April, 1981 and contained 45 recommendations and observations. According to the time schedule, the notes indicating the action taken by Government in pursuance of the recommendations and observations contained in the 51st Report duly vetted by Audit were required to be furnished to the Committee latest by 29 October, 1981. However, Ministry of Finance (Department of Revenue) have submitted action taken notes in respect of 40 recommendations/observations by 6 May, 1982.

1.3. The action taken notes received from Government have been broadly categorised as under:—

(i) Recommendations and observations which have been accepted by Government:

Sl. Nos. 4, 5, 10, 12—17, 24, 29—43&45

(ii) Recommendations and observations which the Committee do not desire to pursue in view of replies received from Government:

Sl. Nos. 6, 7, 11&20

(iii) Recommendations and observations replies to which have not been accepted by the Committee and which require reiteration:

Sl. Nos. 1—3

(iv) Recommendations and observations in respect of which Government have furnished interim replies/no replies:

Sl. Nos. 8-9, 18, 19, 21—23, 25—28 and 44

1.4. The Committee regret to observe that replies to five recommendations (Sl. Nos. 25—28 and 44) have not been furnished inspite of the fact that more than 14 months have passed since the report was presented to Parliament. The Committee deprecate the laxity on the part of the

Ministry in furnishing replies for which a period of six months is normally allowed. The Committee desire that the outstanding replies as well as replies to recommendations which are only of an interim nature should be furnished expeditiously after getting them vetted by audit.

Irregular Exemptions given

1.6. Commenting on the irregular grant of exemptions, the Committee had, in paragraphs 1.111 to 1.113 (Sl. Nos. 1—3) of their 51st Report (Seventh Lok Sabha) observed as under:

"The Committee find that the assessee Company *viz.*, Gramophone Company of India Ltd., Calcutta engaged in the business of manufacturing the gramophone records entered into agreements with three companies based in U.K. for the supply of materices to enable the foreign Companies to manufacture records from the materices for sale outside India. The entire income of Rs. 15.24 lakhs derived by the Company during the previous years relevant to the assessment years 1969-70 to 1974-75 was allowed as a deduction under Section 80-0 treating it as income from technical know-how. The deductions were considered inadmissible by audit as the assessee Company did not satisfy the following conditions of Section 80-0:

(i) There was no evidence that the income had been brought into India by the assessee in convertible foreign exchange;

(ii) The agreements were not approved by the Government or the Central Board of Direct Taxes for the purpose of availing of this relief; and

(iii) The assessee did not export any technical know-how or skill.

So far as the first condition is concerned, the Ministry stated in the first instance that "the point does not appear to have been examined by the assessing officers, after the law was amended retrospectively by the Finance Act, 1974." At a later stage, the Committee were however informed that the royalties receivable by the assessee Company for the period July, 1969 to June, 1974 were adjusted against the royalties payable by them to the foreign companies and the Reserve Bank of India allowed them to remit the balance of Rs. 5,193 relating to the aforesaid period. Thus, according to the Ministry, the assessee company would be said to have received the amounts in convertible foreign exchange for the said period.

The Committee observe that the Central Board of Direct Taxes had issued instructions in November, 1974 to the effect that where the money had not been brought into India in convertible

foreign exchange, immediate action be taken to withdraw the relief (from the assessment year 1968-69 onwards). The Ministry's reply shows that no such review was carried out. In fact, necessary verification was made from the Reserve Bank of India after the matter was taken up by this Committee. This indicates not only the failure on the part of the assessing and supervising officers to follow the instructions of the Board but also the absence of an effective mechanism under which information on such important matters could be concurrently collected. This is further evidenced from the fact that the Board have not been able to enlighten the Committee regarding the system devised by Govt. to ansure that such money is actually brought into the country in foreign exchange. The Board do not also appear to have devised any machinery to collect and collate data in respect of dues receivable and payable by way of royalty etc. for the purposes of Section 80-0 of the Income-tax Act. The Committee are of the view that in order to ensure that there is no abuse of the concession given under the Income Tax Act, the Board should maintain close co-ordination with the Reserve Bank of India and the Department of Economic Affairs and devise a system for maintenance of the requisite data so as to facilitate proper monitoring of the scheme."

1.7. In their Action Taken Note dated 30 October, 1981, the Ministry of Finance (Department of Revenue) have stated:

"The recommendations made by the Public Accounts Committee were examined by the Department of Revenue carefully in consultation with the Department of Economic Affairs. The Ministry is of the view that the present system is adequate and it is not necessary to introduce/devise any new system for maintenance of the requisite data regarding remittances of Income received abroad in covertible foreign exchange to ensure that there is no abuse of the concession given under Section 80-0 of the Income-tax Act, 1961 for the following reasons:

(a) Currently, there are no restrictions or regulations governing inward receipts. The only requirement is that any foreign exchange earned should be repatriated within the statutory time limit set and those who are wilfully withholding such foreign exchange are liable to prosecution for violation of the provisions of FERA.

(b) For balance of payments data and certain other purposes, the Reserve Bank of India maintains data of receipts in the aggregate and according to certain well-established classification of such inward receipts.

(c) It would not be appropriate to introduce any further procedure since such attempts would tend to inhibit inward receipts. All such remittances are handled by Authorised Dealers and these Authorised Dealers report regularly the remittances received. Against these reports of Authorised Dealers, the Reserve Bank of India compiles balance of payments and other required data.

(d) In dealing with section 80-0, the present system is adequate and it is not necessary to introduce any new system. The precise point which any ITO has to satisfy himself before granting concession under Section 80-0 is that the income has been received by remittance from abroad and in convertible currency. It should be possible for the assessee to produce a certificate from the bank concerned that the amount has been received in convertible foreign exchange. In cases of doubt or where any adjustment of receipt was made against any outstanding payment, it may become necessary to get a cerificate from the Reserve Bank of India to confirm that the adjustment was in order and had been with their prior approval.

(e) In Instruction No. 1242 dated 29-3-1979, the Board have already emphasised that one of the conditions for the eligibility of the benefit of Section 80-0 is that the royalty, commission, fees etc., should be brought into India in convertible foreign exchange. A list of currencies which are so recognised by the Reserve Bank of India has already been sent to all Commissioners of Income-tax *vide* Board's Instruction No. 797 dated 23-11-74. In Instruction No. 1242 referred to above, it has also been clarified that all remittances to India from countries other than Nepal and Bhutan, may be treated as remittances in a convertible currency to India provided they are supported by certificates issued by Authorised Dealers in Foreign Exchange confirming *inter-alia* that the remittances have been received in a manner which is in conformity with the Exchange Control Regulations.

2. This issues with the approval of the Minister of State for Revenue and Expenditure."

1.8. The Committee had in the 51st Report dealt with a case of irregular exemption given to the Gramophone Company of India Ltd., Calcutta engaged in the business of manufacturing of gramophone records. Audit had pointed out that the deductions allowed to the assessee company under

Section 80-0 were inadmissible as the conditions laid down therein had not been satisfied. No evidence was adduced before audit to show that the income had been brought into India by the assessee in convertible foreign exchange. Two other conditions viz. (i) specific approval by the Govt. or the CBDT for the purpose of availing the relief and (ii) export of technical know-how or skill by the assessee company had also not been fulfilled. The Committee had in this context observed that no review had been made by the Board so as to detect similar cases of irregular exemptions having been given after the law was amended retrospectively by the Finance Act, 1974. The Board had also not been able to enlighten the Committee with regard to the system devised by Government to ensure that the money had actually been brought into the country in foreign exchange. The Committee had further pointed out that here was no machinery in he Board to collect and collate data in respect of dues receivable or payable by way of royalties etc. for purposes of Section 80-0 of the Income-tax Act. The Committee had therefore, emphasised the need for (i) maintaining close coordination with the Reserve Bank of India and the Department of Economic Affairs to prevent abuse of the concessions given under the Act and (ii) devising a system for maintenance of the requisite data so as to facilitate proper monitoring of the scheme.

The Ministry have in their reply opined that the present system is adequate and that it is not necessary to introduce/devise any new system for maintenance of requisite data regarding remittances of income received from abroad in convertible foreign exchange. It has been stated inter alia that the Reserve Bank of India maintains data of receipts in the agreegate according to certain well established classification of such inward receipts. The CBDT on their part are stated to have published a list of currencies which are recognised by the Reserve Bank of India and the same has been notified through executive instructions to the field officers. It has been further stated that in dealing with Section 80-0 the ITO has to satisfy himself that the income has been received by remittances from abroad in convertible currency and that it should be possible for the assessee to produce a certificate from the bank concerned that the amount has been received in convertible foreign exchange. In cases of doubt a certificate from the RBI may be asked for to confirm that the adjustment was in order and had been done with their prior approval.

The Ministry's reply is still silent on the question whether a review has at all been carried out with regard to the exemptions given under Section 80-0 after the law was amended retrospectively by the Finance Act, 1974. The Committee desire that such a review should be carried out immediately and the findings thereof communicated to all Commissioners of Income Tax with instructions to take necessary rectificatory measures. The Committee reiterate the need for keeping close co-ordination with the Reserve Bank of India and the Department of Economic Affairs in such

cases so as to make sure that income from export of technical know-how is actually brought into India in convertible foreign exchange before any relief is allowed to the assessee under Section 80-0. The Committee further reiterate the need for devising an effective mechanism in the Board so that data/information on such important matters can be concurrently maintained and proper monitoring/evaluation of the scheme becomes easy.

Review of working of Sections 80-MM and 80-0

1.9. In paragraphs 1.128, 1.129, 1.131-1.33 (Sl. Nos. 18, 19, 21-23 of the 51st Report, the Committee had recommended as under:

"In reply to some further specific questions regarding the machanism available with the Ministry/C.B.D.T. to ensure that such agreements do not, in fact, involve transfer of technology not relevant to Indian needs; that price agreed is reasonable and it is not a cover for tax evasion; whether it would not be proper to put a total ban on the transfer of technology by foreign firms to their subsidiaries in India etc. the Committee were informed that the information was being collected and further reply would follow. The same is still awaited (April, 1981).

In reply to a further question, the Committee were informed that no general review has so far been made by the Department to ascertain how far the concession given under Section 80-MM has achieved the desired objectives.

The Committee consider that a periodical and systematic review and evaluation of the concessions given under Section 80-MM and 80-0 is essential to ensure that the underlying objectives are in fact achieved. There is a Special Cell (called 80-MM Cell) already in existence for scrutinising the agreements that come up to the Board for their approval. The Committee consider that this Cell should not rest content merely in scrutinising the agreements but should obtain the requisite data of all assessments under this Section from the CSIT and subject the same to critical scrutiny. The cell should, therefore, be strengthened for the purpose without delay.

The Committee further recommend that a general review of the working of sections 80-MM and 80-0 should be carried out by the Board with a view to finding out how far the objectives in granting the tax concessions have been subserved and what in-built safe-guards need to be provided to prevent abuse thereof. Such a study should be initiated immediately and the findings intimated to the Committee within six months.

The Committee would also be interested to have the Ministry's reply to the question posed by them in an earlier paragraph (para 1.128) particularly with regard to disallowing the tax concession under Section 80-MM to Indian Companies who remit any part of their realisation on sale of technology to their principals or to any foreign company."

1.10. In their Action Taken Note dated 27 November, 1981, the Ministry of Finance (Department of Revenue) have stated:

"The Committee constituted under Director (O&M) has been entrusted with the work of considering the suggestion whether the concession under Section 80-MM should be allowed or not to subsidiaries of foreign companies in India. A final view on this question will be taken by the Board after the report of the Committee is available.

A Committee has been constituted under Director (O&M) to carry out the general review of the working of Section 80-MM and Section 80-0 with reference to their objectives.

The proposal for creation of post of an Under Secretary is being processed. The Committee will be informed as soon as a final decision is taken in the matter."

1.11. In Paragraph 1.132 of the 51st Report, the Committee had emphasised that a periodical and systematic review and evaluation of the concessions given under Sections 80-MM and 80-0 was essential to ensure that the underlying objectives were in fact achieved. The Committee had also emphasised the need for strengthening the Special Cell (called 80-MM Cell) which is charged with the responsibility of scrutinising agreements that come up to the Board for approval. The Ministry have stated that a committee has been constituted under Director, O&M to make a general review of the working of sections 80-MM and 80-0 with reference to their objectives. This departmental committee has also been asked to consider the question whether the concessions under Section 80-MM should at all be allowed to the subsidiaries of foreign companies in India. The Committee desire that the study should be expedited and its findings intimated to them.

CHAPTER II

CONCLUSIONS AND RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

As for the second condition, the Committee observe that the agreement was approved initially by the Ministry of Industry in 1964. It has since been stated by the Ministry of Finance that the audit objection is acceptable as the above approval was not for purposes of Section 80-0. The Act specifically provides that the agreement with the foreign Company should be approved by the Central Government in this behalf i.e. for the specific purpose of allowing the concession in tax. In fact, the instructions issued by the Board has made it abundantly clear that approval granted by the administrative Ministries will not satisfy the legal requirement. The Committee consider it very unfortunate that the assessing officers completely overlooked the explicity provisions of the Act and the instructions issued in pursuance thereof. It is regrettable that this important condition esoaped the notice of Internal Audit as well.

The Committee find that the case was not scrutinised by the IAC also The contention of the Ministry that scrutiny by the IACs is done on a random basis is in conflict with the instructions of the Board that the deductions to be claimed under section 80-0 should be quantified by the ITO with the approval of the IAC.

It would thus appear that there has been failure at all levels in this case. The Committee, therefore, desire that the lapses should be brought to the notice of all concerned, for remedial action. The Committee also recommend that a thorough review of all such agreement should be carried out by the CBDT under a time bound programme and the results communicated to the Committee.

[S. Nos. 4-5 (Paras 1.114—1.115) of the Appendix II of the 51st Report of the PAC (Seventh Lok Sabha) (1980-81)]

Action Taken

Pursuant to the recommendations of the Honourable Committee, necessary instructions have been issued to all the Commissioners of Income-tax by the Director of Inspection (IT&A) through Circle No. 121 (F. No. I-6/81/DIT/5952) dated the 3rd July, 1981. (copy enclosed).

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 241/5/81-A& PAC-II dated 17 November, 1981].

CIRCULAR NO. 121

F. No. I-6/81/DIT/5952

DIRECTORATE OF INSPECTION (INCOME-TAX)
NIRIKSHAN NIDESHALAYA (AAYAKAR)

'grams' KARVIKSHA

Mayur Bhavan (4th Floor)
New Delhi-110001

Dated 3rd July, 1981.

To

The Commissioners of Income-tax,
(By name).

Sir,

Subject:—Action to be taken on the recommendations contained in the 51st Report (7th Lok Sabha) of the PAC on paras 1.114 to 1.115, 5.24 to 5.32—Responsibility of Administrative IAC—Instructions regarding—

In their 51st Report presented to the Lok Sabha on 30th April, 1981, the PAC has pointed out, *inter-alia*, the following lapses, irregularities and/or mistakes committed by the assessing officers in making assessments which have resulted in substantial under-assessments of tax:—

(i) The explicit provisions of the Act and the instructions issued in pursuance thereof were completely overlooked and the deductions erroneously allowed u/s 80-0 even though the stipulated conditions were not fully satisfied [Case of Gramophone Co. of India Ltd., Calcutta—*vide* para 29(ii) of the CAG, Report for the year 1978-79—Direct Taxes (pages 67-68)].

(ii) The commonest mistake had been wrong translation of digit or the dropping of a digit of substantial amounts (generally one lakh of rupees) either from the assessed total income or from the amount of tax payable.

In this connection, extracts from paras 1.114 to 1.115 and 5.24 to 5.32 of the aforesaid PAC's Report are annexed for ready reference (Annexure A).

2. In order to avoid the recurrence of such costly mistakes and obviate criticism from the PAC in future, the Commissioners are requested to issue suitable instructions to the IACs to exercise more effective supervisory control in this regard to ensure:

(a) that the deductions claimed u|s 80-0 are quantified by the ITOs with IAC's prior approval;

(b) that the instances of arithmetical and transcription inaccuracies noticed in their inspection of individual cases are duly commented upon and rectified expeditiously; and

(c) that periodical reivew meetings are held to promote the understanding of various problems in their proper perspective.

4. It is requested that a copy of the instructions issued by the Cs.I.T. to the IACs may be endorsed to this Directorate. The receipt of this Circular may kindly be acknowledged to Shri D. C. Taneja, D.D.I.

Yours faithfully,

Sd/-

Encl: As above.

(J. C. LUTHER)
Director of Inspection
(Income-Tax & Audit)

Copy forwarded to:

1. Private Secretary to the Chairman, CBDT with reference to his U.O. No. 241/5/81-A&PAC-II dated 22nd May, 1981.
2. Private Secretary to Members of CBDT for information.
3. Shri S. M. Chickemane, Director (PAC), CBDT, New Delhi for information and necessary action with reference to Chairman's U.O. dated — .5.81.
4. Shri M. K. Pandey, Secretary, CBDT, New Delhi for information and necessary action with reference to Chairman's U.O. dated —.5.81.
5. Directors of Inspection (R&S)|(P&PR)|(Inv.)|(Special Cell)| Vigilance/(Recovery), New Delhi.
6. Director of O&M Services (Income-tax), New Delhi.

Sd/-

(D. C. TANEJA)

Deputy Director
for Director of Inspection (I. T. & Audit),
New Delhi.

ANNEXURE 'A'

EXTRACTS FROM THE PAC'S REPORT (1980-81) 7TH LOK SABHA

1.114. As for the second condition, the Committee observe that the agreement was approved initially by the Ministry of Industry in 1964. It has since been stated by the Ministry of Finance that the audit objection is acceptable as the above approval was not for purposes of Section 80-0. The Act specifically provides that the agreement with the foreign Company should be approved by the Central Government in this behalf *i.e.* for the specific purpose of allowing the concession in tax. In fact, the instructions issued by the Board had made it abundantly clear that approval granted by the administrative Ministries will not satisfy the legal requirement. The Committee consider it very unfortunate that the assessing officers completely overlooked the explicit provisions of the Act and the instructions issued in pursuance thereof. It is regrettable that this important condition escaped the notice of Internal Audit as well.

1.115. The Committee find that the case was not scrutinised by the IAC also. The contention of the Ministry that scrutiny by the IACs is done on a random basis is in conflict with the instructions of the Board that the deductions to be claimed under section 80-0 should be quantified by the ITO with the approval of the IAC.

It would thus appear that there has been failure at all levels in this case. The Committee, therefore, desire that the lapses should be brought to the notice of all concerned, for remedial action. The Committee also recommend that a thorough review of all such agreements should be carried out by the CBDT under a time bound programme and the results communicated to the Committee.

5.24. Under-assessment of taxes of substantial amounts have been noticed year after year on account of mistakes due to carelessness or negligence, which could have been avoided had the Assessing Officers and their staff been a little more vigilant. Such cases of under-assessment have been the subject matter of several recommendations of the Public Accounts Committee in the past. The Committee in paragraph 5.2 of their 186th Report (Fifth Lok Sabha) had observed that the commonest mistake that has been adversely commented upon by the Committee, almost year after year, is the dropping of digits, generally one lakh of rupees either from the assessed total income or from the amount of tax payable.

5.25. Again, the Committee had observed that a mistake, commonly committed, was the wrong transcription of digit or the dropping of a digit, from a substantial amount, resulting in under-assessment of income-tax

(paragraph 5.3 of the same Report). The Committee in an eariler report (51st Report, Fifth Lok Sabha), had reviewed the trend of mistakes in computing income and tax and made specific recommendations on the four main contributory factors, namely, rush of work towards the end of the year, continued inefficiency of Internal Audit, lapses of check on computation income and the lack of counter-check on such computations.

5.26. It is evident from the executive instructions (*vide* para 9.12 *ante*) that the assessing officers and their subordinate staff are required to carry out Internal checks on the computation of income, value of assets and on the amount of tax resulting therefrom, as part of their regular duties and responsibilities.

5.27. Apparently the instructions issued by the Central Board of Direct Taxes are not being strictly followed by field offices of the Department. Otherwise, the important instructions issued by the Board from time to time for ensuring arithmetical and transcription accuracy in the work done in various Wards, would have been enforced by the range Inspecting Assistant Commissioners during their administrative inspection and by the Internal Audit and the failures of the type noticed in Revenue Audit would not occur so frequently.

5.28. The weaknesses of administrative inspection have been subject matter of comment by the Public Accounts Committee in paragraph 5.10 of their 186th Report (Fifth Lok Sabha) wherein they observed:

> "Another factor that came to the notice of the Committee was the weakness of inspections by the Inspecting Assistant Commissioners of Income-tax. In paragraph 1.64 of their 3rd Report (Fourth Lok Sabha) the Committee desired that instructions should be issued to the Commissioners to chalk-out a programme of inspection of all the circles at regular intervals. In reply (*vide* page 57 of the 37th Report) (Fourth Lok Sabha), the Ministry stated that necessary instructions have been issued in December 1968 for programme of inspection by Inspecting Assistant Commissioners to be drawn up in such a manner so that every circle was inspected at least once in three years".

5.29. The Committee, however, note that the layout of the inspetcion report of IAC was revised only recently in 1980 to enable the IAC to give a more meaningful appraisal of the ITO's performance and make inspections more effective.

5.30. The Committee note that though the case was required to be checked by the Internal Audit Party but had not been checked and the Ministry is ascertaining the reasons for this failure on the part of Internal

Audit Party. The Committee would like to be apprised of the reasons so ascertained.

5.31. The Committee cannot but observe that such simple but costly mistakes continue to persist not merely because of the initial human failure, but more so because of the lack of supervision and failure of the systems of internal control and internal audit. The Board of Direct Taxes seems to be content with issuing repeated instructions on the subject and informing the Committee of their having done so. The results, however, clearly indicate that neither superior supervision, nor internal audit, have actually been brought upto the desired level so far. The Committee would recommend that these continuing problems should be discussed by the Board, or its Members, in periodical review meetings with the Commissioners of Income-tax, and other field officers so as to get a proper feed-back as to why the instructions issued by the Board are not having the desired effect and then to devise effective corrective measures based on such feed-back. The Committee would also recommend that in the field also the Commissioners should hold similar periodical review meetings to understand such basic problems in their proper perspective, which alone can make for meaningful solutions.

5.32. The internal audit organisation continues to be weak despite the various steps taken in pursuance of the earlier recommendations of the Committee. Cases of this type involving substantial revenue continue to be reported by Revenue Audit where either the internal audit did not check up the case at all, or it failed to point out the particular mistake. It is necessary that the Director of Inspection (IT&A), who is entrusted with the responsibility of supervising and reviewing the working of internal audit, discharges this responsibility in a manner to build up the internal audit organization to a level of efficiency where at least the bigger cases are all checked in internal audit and checked properly.

Recommendations

The Committee find that the proceedings in respect of assessment years 1972-73 and 1973-74 have been stayed *ex-parte* by the Calcutta High Court on the ground that "as otherwise the petitioner would suffer extreme hardship". The Ministry have informed the Committee that "there has been an undue delay in the filing of the counter affidavit. Commissioner of Income-tax is being asked to ensure that such delays do not occur in future. The Law Ministry is being requested to try to get the stay vacated."

[S. N. 10(Para 1.120) of the Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (Seventh Lok Sabha)]

Action Taken

The petitioner company, Gramophone Company of India Ltd. filed writ petition on 8.7.1977 in the Calcutta High Court when the Court had issued a Rule and granted an interim injunction staying further proceedings in pursuance of the notices under section 148 for assessment years 1972-73 and 1973-74 for a fortnight. The petitioner was further given liberty to apply for extension of the said interim injunction till the disposal of the Rule with notice to the Department. All this was informed by the assessee's advocate by his letter dated 12.7.1977 received by the concerned Commissioner of Income-tax on 13.7.1977. In the Commissioner's office judicial file, the following note was recorded on 16.7.1977:

> "This office file may now be sent to Shri L. K. Chatterjee, Central Govt. Advocate, for necessary action at his end. The Vakalatnama may be taken out from the file. The assessee will now move the Court for extension of the interim injunction on 19.7.1977. The same should be opposed. The file may please be returned as soon as done with, with necessary advice and Court's orders, if any."

2. The file was received in the Branch Secretariat on 18-7-1977, but it was diarised in the Branch Secretariat of Law Ministry on 19.7.1977 and put to with a note addressed to Shri L. K. Chatterjee, Central Government Advocate. By that time on 19.7.1977, the Court had already directed the interim injunction to continue till the disposal of the rule with liberty to the respondent to apply for vacating or varying the order. Parawise comments on the writ petition with a request for drawing up the affidavit-in-opposition were sent by the Commissioner to the Branch Secretariat on 29.12.1977. The Branch Secretariat asked for the return of the copy of the writ petition from the CIT which was done on 2.6.1978. The Branch Secretariat engaged the Senior Counsel to draw the draft affidavit-in-opposition on 29.1.1979. On 28.3.1980 draft affidavit-in-opposition was prepared and forwarded to the Commissioner for his approval and early return. The affidavit sworn by the ITO was sent back on 21.4.1981 to the Branch Secretariat. The delay between the period from 28.3.1980 to 21.4.1981 is attributable to the Department and is reportedly due to the ITO misplacing the draft affidavit-in-operation and losing sight of the matter.

[Min. of Finance (Deptt. of Revenue) O.M. F. No. 241|5|81-A&PAC-II dated 14 January, 1982].

Recommendations

In this connection, the Committee note with concern that the total pendency of writ petitions against orders of the Income-tax authorities in various High Courts was as high as 3,652 as on 1st January 1981 out of

which as many as 1384 were pending for 2 to 5 years and 198 for more than 5 years. Out of this, the pendency pertaining to Calcutta and West Bengal Commissioners charge was as high as 2074 of which 896 were 2 to 5 years old and 143 were more than 5 years old. During their visit to Calcutta, a Study Group of the Committee were informed that the legal assistance available to the Department was not adequate. It was suggested that the Department should have the freedom to choose its own Counsel from a panel of approved lawyers so that the lawyers knew that they have to handle briefs in active and full consultation with the Department and not as though they were dealing with an anonymous client.

Considering the very large number of tax cases in which proceedings have been stayed by the Calcutta High Court, the Committee recommend that the Board should give serious consideration to the above suggestion that it should become possible for the Department to get the stay orders vacated expeditiously and also to pursue the proceedings in the Appellate Tribunals, High Court, etc. in a concerted manner.

[S. Nos. 12, 13) (Paras 1.122 & 1.123) of the Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (Seventh Lok Sabha)]

Action Taken

The Branch Secretariat of the Ministry of Law at Calcutta is incharge of the advice and litigation work of all the Central Government Departments located at Calcutta. The Branch Secretariat is under the overall charge and supervision of a Joint Secretary and Legal Adviser, who is assisted on the litigation side by one Senior Central Government Advocate and two Central Government Advocates and Junior Central Government Advocates, and on the advice side, by a Deputy Legal Adviser and an Assistant Legal Adviser. The Litigation Section looks after the conduct of cases in the Calcutta High Courts on the Original Side as well as on the Appellate Side and also cases in arbitration on behalf of the Central Government. Each Central Government Advocate has been placed in charge of specified Ministries/Departments of the Government. The Junior Central Government Advocates assist the Senior Central Government Advocates and the Central Government Advocates. The Central Government Advocates and Junior Central Government Advocates, apart from appearance in court wherever necessary, draw pleadings and other papers required to be filed in the court. Advocates from the panel are also approved by them for appearance in various cases. There are at present two Panels of Central Government Counsel for Calcutta High Court, one for income-tax cases and the other for remaining matters. For litigation work in the High Court, the Central Government Advocates nominate Counsel out of the said Panels. Special

Senior Counsel from the Panel, are in certain cases engaged where it is considered necessary to do so in view of the importance of the cases, with the prior approval of the Main Secretariat.

2. The Income-tax Panel of Counsels in the Branch Secretariat at Calcutta had been finalised in consultation with the Income-tax Department in Calcutta. The Panel consists of Senior Counsel, Group I and Group II. There are also junior Counsel in Group I, Group II and Group III. The Panel consists of 30 Counsel belonging to the various Groups.

3. Ministry of Law has agreed that where the Department would suggest engagement of a particular Counsel from the Panel having regard to the comparative merit of the Counsel to deal with a particular complicated case, such request would be given due consideration by the Branch Secretariat.

4. In the context of the difficulties being faced by the Department in proper pursuance of writ matters in the Calcutta High Court, the Member of the Board held discussions with the representatives of the Ministry of Law at New Delhi. It was realised that there is a definite trend of heavy filing of writ petitions against the orders of the I.T. authorities in Calcutta with the sole purpose of getting the restraint order or injunction against the concerned authorities. It was further realised that this trend can be arrested only if the Department's case is represented properly when 14 days notice of motion is issued and the Departmental Counsel should make protest to the stay being extended or confirmed. Thereafter within the time allowed the parawise comments etc. should be sent by the concerned Commissioner to the concerned Central Government Advocated who would attend to the drafting of reply in opposition etc. In cases where the stay orders have been made absolute, steps will be taken to move the Court for vacation or for modification of the terms thereof to safeguard the revenue. Since the pendency of old matters is very large, a selective approach only could be adopted for screening the pending matters as involve common question of law. Another category of cases to be screened are those where the issues raised in the petitions are covered by the earlier decisions of the High Court/Supreme Court. In all such cases so bunched up, request will be made to the Court for early fixation and disposal.

5. Looking to the enormity of the work to be attended to by the Branch Secretariat in coordination with the Commissioners, it was decided that one Deputy Legaly Adviser in the Branch Secretariat will exclusively deal with the litigation of Income-tax cases.

6. The Branch Secretariat has already allotted one Deputy Legal Adviser for the purpose. The CIT, West Bengal—It has also appointed one Addl. Inspecting Assistant Commissioner (Judl.) to look after the litigation work in liaison with the Branch Secretariat. In the last Commissioners' Conference held in April, 1981, the Board decided that to assist the standing counsels in the High Courts in the four metropolitan places and Ahmedabad, 5 Assistant Commissioners of Income-tax should be posted from the existing strength of the respective charges. In each of the other charges where the High Courts are situated the ITO out of the existing strength is to be posted to assist the Standing Counsel. This decision is being carried out by the Commissioners depending upon the availability of the manpower from the existing strength.

7. The experience of the Commissioners with regard to the Calcutta High Court is that the writ petitioners always succeed in getting stay against the impugned orders of the I.T. authorities. Even moved later for vacation of such stay the Court cannot be persuaded. Even if terms of stay are varied the Court allows the ITO to pass the assessment order without effecting any service thereof and also of the notice of demand. In the circumstances the Court can only be requested to weigh stay request in tax writ cases carefully and to grant stay, if must, with suitable conditions imposed to safeguard legitimate interest of revenue by ordering for furnishing satisfactory security from the tax-payer.

8. Suitable instructions to the Commissioners on the above steps being taken already exist and very recently the subject of 'Improving the quality of representation before Appellate Authorities and High Courts/ Supreme Court' was discussed in the Commissioners' Conference held in April, 1981. Certain decisions were taken for follow up action by the Commissioners. An extract of the minutes of the said Conference are enclosed. (Annexure).

[Min. of Finance (Deptt. of Revenue) O.M. F. No. 241/5/81-A&PAC-II dated 14 January, 1982.]

ANNEXURE

EXTRACT

ITEM—9 IMPROVING THE QUALITY OF REPRESENTATION BEFORE APPEALATE AUTHORITIES AND HIGH COURTS/SUPREME COURT

* * * * * *

18.2 While emphasising the need for selection of competent Government advocates in the various High Courts, he invited suggestions for improving the procedure for appointment of Standing Counsels. For Departmental supervision over the work of Standing Counsels, their

briefing and for effective liaison between them and the concerned Commissioners, he conveyed the Board's decision that to assist the Standing Counsels in the High Courts in the four metropolitan places and Ahmendabad, five Assistant Commissioners of Income-tax should be posted from the existing strength of the respective charges. In each of the other charges where the High Courts are situated, an Income-tax Officer, out of the existing strength is to be posted to assist the Standing Counsel.

[Action CsIT]

18.3. Specifically mentioning the problems in West Bengal charges, Member (WT&J) expressed concern over large filing of writs with the sole purpose of getting stay of injunctions so as to stall the actions of the Income tax authorities. Writs are filed against draft assesment orders under section 144-B etc, and the petitioners always succeed in getting stay against such assessments being finalised. Even if terms of stay are varied, the Court allows the ITO to pass the assessment order without effecting any service thereof and also of the notice of demand. He therefore asked the Commissioners to be vigilant in such matters and to take timely action for getting stay vacated or for securing satisfactory security from the taxpayer if such stay is granted. This will help in arresting filing of writs merely for stalling Departmental action.

[Action CsIT]

Recommendations

The Committee find that there is no machinery in the Ministry or in the Board to monitor progress of cases pending due to stay orders given by the Courts on writ petitions. This aspect should be looked into and the Committee aprised of the measures taken.

The Committee further recommend that the question of mounting pendency of writ petitions in Calcutta High Court should be taken up at a high level in the Ministry of Law, with a view to devising ways and means to see that huge revenues due to Government do not remain locked up due to vexatious and time-consuming proceedings in Court of Law.

[(S. Nos. 14 & 15) (paras 1.124 & 1.125) of the Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (Seventh Lok Sabha).]

Action Taken

The primary responsibility for proper conduct of litigation in the High Court is of the concerned Commissioner. The Committee's suggestion for providing for a machinery in the Board to monitor progress of cases pending due to stay orders given by the Courts on writ petitions

appears to have been made on the premise that the Commissioners are failing in their duty. As is clear from the, statistics regarding pendency of writ petitions as on 1-1-1981, out of 3652 writs pending for various High Courts, the West Bengal charges account for 2074. The Branch Secretariat of the Ministry of Law are saddled with the responsibility of providing proper representation on behalf of the Department, besides tendering legal advice on the issues referred to it by the Commissioners. The Board has already taken up the problem of pendency of writs in Calcutta High Court and references matters and of toning up the whole system for meeting the challenge of litigation with the Law Minister.

2. The litigation work involves almost constant liaison with the Counsel without which it woud not be possible to get the work done. The Member of the Board in the meeting held on 18-11-1981 with the representatives of the Ministry of Law discussed the problem besetting the litigation work in Calcutta High Court in all aspects. The minuts of the said meeting are enclosed (Annexure). The Board would closely watch the implementations of the decisions arrived at in the said meeting.

[Min. of Finance (Deptt. of Revenue) O.M. F. No. 241/5/81-A&PAC-II dated 14 January, 1982.]

ANNEXURE

Minutes of the meeting held in the room of Shri K. G. Nair, Member, Central Board of Direct Taxes, on the 18th November, 1981.

Some of the issues relating to the litigation and advice work of the Income-tax Department at Calcutta were discussed at a meeting held in the room of Shri K. G. Nair, Member, C.B.D.T. between Shri Nair and S/Shri M. Gouri Shankara Murthy, Joint Secretary & Legal Adviser of the Law Ministry's Branch Secretariat at Calcutta, and P. K. Kartha, Joint Secretary & Legal Adviser, who is advising the Ministry of Finance from the Main Secretariat. Shri Nair was assisted by Shri O. N. Mehrotra, Director and two other officers.

2. At the outset, the question of grouping income-tax cases so that (a) cases involving same or similar questions could be heard and disposed of together and (b) cases already covered by decisions of the Supreme Court, was taken up. In this context the Law Secretary's letter to Shri Kuruvilla, the then Chairman of the C.B.D.T. and the subsequent follow up letters written to the Commissioner, West Bengal, by Shri R. L. Mukherjee, Sr. Central Government Advocate in the Branch Secretariat, Calcutta were referred to.

3. It was explained on behalf of the Board that no action could be taken so far in the West Bengal Charges with regard to the grouping of cases. It is decided that the CIT, West Bengal-I will post an additional IAC (Judl.) in his office to attend to the work of grouping of cases on top priority basis.

4. A question raised during the discussions related to the appointment of an in-house Counsel to help the Income Tax Department at Calcutta with on-the-spot advice and process the litigation work in the High Court. It was mentioned that during an earlier meeting at Calcutta on this subject the Law Secretary and Shri B. S. Sekhon, Joint Secretary & Legal Adviser, who was then the head of the Branch Secretariat, were inclined to agree with the said proposal.

5. It was agreed that while there could be no objection in principle to the proposal of having an in-house adviser in the Department itself, such an adviser, consistent with the allocation of business rules and the practice followed by the other Ministries and Departments, has to be an officer of the Ministry of Law and under its administrative control. Accordingly it was agreed that steps for the creation of the post of an in-house legal adviser in the Income-tax Department in Calcutta may be expeditiously taken by the Department in consultation with the Ministry of Law.

6. Another point discussed was relating to the choice of the counsel in litigation. In this context, reference was made to the extracts from the 51st Report of the Public Accounts Committee wherein it has been stated that a Study Group of the Committee during its visit to Calcutta was informed that the legal assistance available to the Department was not adequate and the Department should have the freedom to choose its own counsel from a penal of approved lawyers so that the lawyers knew that they have to handle briefs in active and full consultation with the Department and not that they were dealing with an anonymous client.

7. It was pointed out by Shri M. Gouri Shankara Murthy in the course of the discussion, *inter-alia*, that—

(a) the litigation work involves almost constant liaison with the counsel without which it would be almost impossible to get the work done.

(b) Shri Gouri Shankara Murthy was not given any opportunity to explain the position to the Study Group of the Public Accounts Committee which visited Calcutta.

(c) The Income tax Panel of Counsel with the Branch Secretariat had been finalised in consultation with the Income-tax Department in Calcutta itself and if it is desired to engage any

particular counsel from the panel the Department is always welcome to communicate its preferences. If such a request comes from the Department, it would be given due consideration.

(d) Once liaison as suggested is established between the Department and the counsel briefed to appear, it will be easier to get the draft affidavits-in-opposition prepared, settled and filed and for instructions to be communicated.

8. As regards the payment of fees to the Counsel, a point was raised as to whether the fee bills are to be verified by the Income-tax Department or by the Branch Secretariat. It was pointed out that the Branch Secretariat is in charge of verification of the fee bills and payment of the counsels' fees and as such, there is no question of verification of fee bills by the Income tax Department. In this context, attention was drawn on a letter wherein the Branch Secretariat had requested for such verification of the fee bills of a counsel. Shri Gauri Shankara Murthy pointed out that the bills in question perhaps pertained to the period prior to the taking over of the litigation work of the Income tax Department by the Branch Secretariat and as such, the necessary verification was required to be done by the Income Tax Department itself who will have the requisite material. After the Branch Secretariat has taken over the work, there has been no case to his knowledge where the Income Tax Department has been requested for verifying the fee bills of the Counsel.

9. The question of the delay in filling the affidavits-in-opposition in several matters was also discussed. This was brought to the notice of the Branch Secretariat in the form of three lists. Sh. Gouri Shankara Murthy pointed out that he had scrutinised the first two lists. He also pointed out that the bulk of these cases pertain to the period when Shri S. K. Mitra, the then Senior Central Govt. Advocate, was holding charge. He had no opportunity to look into the third list. He indicated that action had already been initiated for preparation of the draft affidavits-in-opposition and the position will become easier if there is better liaison between the Department, the Branch Secretariat and the Counsel. The appointment of a suitable officer from the Department for liaison as adverted to in para (3) supra would considerably help in such liaison.

10. As to the preparation of the annexures for the applications under Section 256(2) of the Income tax Act to the High Court, it was noted that the exiting practice is for the Income Tax Department to get them

typed or cyclostyled and make available to the Branch Secretariat adequate number of copies. Since this arrangement had been working well, it was felt that the *status quo* may be maintained.

11. Finally, one further point which was considered related to the procedure in making references to the Branch Secretariat in matters relating to applications under Section 256(2) of the Income-tax Act. More often than not the advice of the Ministry is not sought in the matter of advisability of filing an application under Section 256(2). The Branch Secretariat is approached only to prepare the engrossed application. When it was pointed out that seeking the advice of the Branch Secretariat in the first instance is necessary, the Department has started making references in some cases but without giving self-contained notes on the facts of the case with appropriate references and the Departments own views in the matter. The notes and correspondence portion relating to the case of Chittavalsah Jute Mills Co. Ltd. (Deptt.'s file No. RA 391| 80-81) was brought to the notice of Shri Nair. It was stated by Shri Mehrotra that the Board had already taken suitable action. It was agreed that the notings on the file should be dignified and should conform to the normal etiquette and standard expected of inter departmental notings. It was also agreed that further action for the issue of suitable instructions to the Commissioners in Calcutta will be taken by the Board.

Recommendations

In connection with their examination of the case of M|s. Gramophone Co. of India Ltd., the Committee have come across another case of M/s. Union Carbide Corporation, a non-resident foreign company, which utilised its Indian subsidiary M|s. Union Carbide India Ltd., as an intermediary. In this case, the technology was imported from a foreign country and no local know how was involved; case did not, therefore, satisfy the objectives behind the enactment of Section 80-MM. The tax concession extended to the Indian subsidiary resulted in decrease in tax revenue on 50 per cent of the income derived on the sale and retained by the Indian subsidiary (only 50 per cent was passed on to its principal).

The Finance Secertary admitted in evidence that in such cases there is a possibility of tax obligations being evaded through transfer pricing mechanism. In the light of this statement, the Committee are constrained to note from a written reply furnished by the Ministry that prior to the guidelines being laid down by the Board requiring scrutiny|review of all such agreements, the agreement (between Union Garbide of India Ltd., and Bhabha Atomic Research Centre) was apparently approved by the Ministry of Industrial Development and Internal Trade without

any scrutiny to prevent misuse of the provisions in law. Information is also not available with the Department as to whether the remaining 50 per cent of the fees received by Union Carbide Corporation, New York has been brought to tax.

[Srl. No. 16 & 17 (Paras 1.126 & 1.127) of the Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (Seventh Lok Sabha].

Action Taken

Union Carbide Corporation, USA has been assessed to tax on its receipt of the technical fees from Bhabha Atomic Research Centre 20 per cent of the gross receipt, estimated to be the net profit, has been subjected to tax. The balance amount of 80 per cent of the gross receipt was treated as expenses incidental to the earning of the fees.

[Min. of Finance (Deptt. of Revenue) O.M. F. No. 241/5/81-A&PAC-II dated 27 November, 1981].

Recommendations

1.134. It has also come to the notice of the Committee that the periodicity of reviews of technical collaboration agreements which had been reduced from 10 to 5 years has again been changed to more than 5 years. The Committee would like to be informed of the precise position and the rationable for the change, if any.

Action Taken

Foreign collaboration arrangements are considered and approved by the Government on the basis of licensing arrangements involving payment of lump-sum amount towards know-how|and|or royalty payments. Enquiry participation may also be allowed if the merits of the technology transfer justify. Duration of foreign collaboration agreements will assume importance only in those cases where royalty payments are allowed, since royalty is related to production undertaken during the currency of the agreement.

2. Prior to 1980 the duration allowed for collaborations was eight years in all. It assumed that the gestation period may be around three years and thus royalty will become payable for 5 years after commencement of commercial production. Royalty is expressed as a percentage of ex-factory value of production and after excluding state levies like excise duty, taxes and value of imported components and bought out components procured within the country. The rate of royalty ranges form 3 to 5 per cent.

3. The policy detailed in the earlier para has been in force since 1970. In Joint Commissions and other forums representations were made by foreign parties that large expenditure is being incurred by them on R & D and in developing new products and new processes and they find that the duration of collaboration allowed and the rates of royalty permitted (together with the rate of taxation of 40 per cent on technical services and royalty) do not provide adequate compensation to them to induce transfer of latest technology. It was also observed by the Foreign Investment Board that in many areas involving sophisticated technology Indian companies also need more time to assimilate the know-how or would tend to come forward with proposals for extension for a further duration of 5 years. Technology is making rapid strides in the world and often we have a situation of oligopoly, i.e. a few sellers in the market, handling closely held technology. Taking all these developments and factors a thorough review was undertaken within the Government and it was decided that we should be prepared to allow a longer duration for foreign collaboration arrangements increases on merits. It was accordingly decided that in these cases a duration of 10 years may be allowed. In brief, the position is that the standard duration of 8 years and payment of royalty for 5 years after allowing for a period of 3 years for commencement of production would apply generally. But, in cases where the technology is in special areas, for high value projects, etc. a longer duration of 10 years may be allowed on merits. A copy of the Press Note dated 25.5.81 issued in this connection is enclosed for ready reference. This policy is also guiding the decisions of the Foreign Investment Board/ Project Approval Board.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 9(7)|78-FC(1) dated 18 September 1981].

NO. 9(19)|80-FC(I)

GOVERNMENT OF INDIA

MINISTRY OF INDUSTRY

DEPARTMENT OF INDUSTRIAL DEVELOPMENT

.....

NEW DELHI, the 25th May, 1981.

PRESS NOTE

SUBJECT: Delegation of power to Administrative Ministries for santcioning foreign collaboration proposals.

.....

With a view to streamline and expedite the procedures for securing approvals relating to foreign collaboration proposals, Government have

decided to delegate powers to the Administrative Ministries to accord approvals for foreign collaboration proposals in the types of cases mentioned below:

(i) Where there is no foreign equity participation in the proposal.

(ii) The applicant is not a company with existing foreign equity investment.

(iii) The item proposed to be manufactured is consistent with the priorities set out in the Industrial Policy Statement.

(iv) The proposal is not one envisaging extension of the period of collaboration approved earlier.

(v) The royalty payable is not more than 5 per cent (taxable) and will be comprised within the period of agreement which may extend to 10 years. The period of going into commercial production is included within this period of 10 years. The total lumpsum and royalty payments should not be more than 8 per cent of total expected sales (calculated on an ex-factory value basis) over a period not exceeding 10 years. The above would be treated as upper ceilings and the rate of royalty, the amount of lumpsum and the period of the agreement in respect of individual cases would be decided by the Administrative Ministries on a case to case basis, taking into account all relevant factors. It is desirable that normally the period of agreement should be for eight years and royalty for five years allowing three years for commencement of commercial production.

(vi) Lumpsum payments, if any, are paid in three standard instalments, the first instalment to be paid after the agreement is taken on record, the second instalment on delivery of technical documentations and the third and last instalment to be paid on the commencement of commercial production or four years after the agreement is taken on record, whichever is earlier. If the Indian party so desires, the lumpsum amount sanctioned could be net of Indian taxes with taxes being borne by the Indian party.

(vii) The foreign exchange outgo in each case on lumpsum payments, if any, and royalty together does not exceed Rs. 50 lakhs in the aggregate.

(viii) Excessive outgo on royalty and/or lumpsum would not be permitted.

2. All applications seeking approval for foreign collaboration will continue to be received centrally in the Secretariat for Industrial Approvals (SIA), Foreign Collaboration Section, Department of Industrial Development, New Delhi as hitherto. Applications in respect of proposals which could be disposed of by the Administrative Ministries under the delegated powers will be forwarded by the Secretariat for Industrial Approvals to the Administrative Ministries.

3. Proposals not within the ambit of the above delegations approved will be processed by the Secretariat for Industrial Approvals and submitted to the Foreign Investment Board for due consideration.

4. Foreign collaboration proposals in industries falling within the illustrative list (as amended from time to time) would not be decided under these delegated powers, but would be brought before the Foreign Investment Board. A copy of the Illustrative List is at Annexure A.

5. A copy of the form for seeking approval for foreign collaboration along with guidelines for entrepreneurs is also attached.

No. 9(19)/80-FC. I Dated the 25th May, 1981.

The Press Information Bureau is requested to give wide publicity to this Press Note.

Sd/-
(S. L. KAPUR)
Joint Secretary to the Govt. of India.

Press Information Bureau,
Shastri Bhavan,
New Delhi.

ANNEXURE 'A'

Illustrative list of Industries where no foreign collaboration, financial or technical, is considered necessary

1. *Metallurgical Industries*:

Ferrous: Ordinary Castings, Bright Bars Structurals, Welded CI Steel Pipes & Tubes.

Non-Ferrous: Antimony, Sodium Metal, Electrical Resistance Heating (nickel free alloy), Aluminium litho plates.

2. *Electrical Equipment*:

Electrical fans, Common domestic appliances, Common types of winding wires and strips, Iron clad switches, AC motors, Cables and Distribution Transformers.

3. *Electronic Components and Equipments*:

General purpose transistors & Diodes, Paper, Mica and Variable Capacitors, T.V., Receivers, Tape Recorders, Teleprinters, P.A. Systems, Record Players/Changers.

4. *Scientific and Industrial Instruments*:

Non-specialised types of valves, meters, weighing machinery, and mathematical, surveying and drawing instruments.

5. *Transportation*:

Railway wagons, Bicycles.

6. *Industrial Machinery*:

Building and constructional machinery, Oil mill Machinery, Conventional rice mill machinery, Sugar Machinery, Tea processing machinery, General purpose Machinery.

7. *Machine Tools*:

Forged hand tools, General purpose machine tools.

8. *Agricultural Machinery*:

Tractor drawn implements, Power tillers, Foodgrain dryers, Agricultural implements.

9. *Miscellaneous Mechanical Engineering Industries*:

10. *Commercial, Office & Household Equipments of Common use*:

11. *Medical and Surgical Appliances*:

12. *Fertilizers*:

Single super phosphate, Granulated fertilizers.

13. *Chemicals (Other than Fertilizers)*

Acetic acid; Acotanilide; Ethyl Chloride ; Viscose Filament Yarn/ Staple fibre; Melathion technical; Sulphate of alumina; Potassium Chlorate; Fatty Acid & Glycerine; Butyl Titanate; Warfarin; Silica gel; Lindane; Endosulfan; Phanthoate; Nitrofen; Ethyl ether; Plastipeel.

14. *Dyestuffs*:

Benzidine; O-Toludine; Carbozole Dioxazine violet pigment; Cadmium sulphide orange.

15. *Drugs & Pharmaceuticals*:

Caffeine (natural); Phenyl Butazione; Tol Butamide; Para Acetamel; Phanacetin; Senna extract; Diasogenin; Clofibrate; 4-Hydroxy Cumarin; Xenthopotoxin; Calcium Gluconate; Choline Chloride; Glyceryl Gualacolate; Phenylethy biguanide hydro-chloride; Scopolamine hydro-bromide; Niacinamide; Ortholelyl biguanide; Colchicine; Diazepam; Sorbitol from dextrose monohydrate; Berberine hydrochloride; Balladonna; Acriflavine; Calcium hypophosphite; Chloridiazepoxide.

16. *Paper & pulp including paper products*:

17. *Consumer goods*:

18. *Vegetable oils & vanaspati*:

19. *Rubber Industries*:

Viscose tyre yarn; Metal bonded rubber; Latex foam; Rubberised fabrics; Bicycle Tyres and Tubes.

20. *Leather, Leather Goods & Pickers*:

Belting-Leather; Cotton & hair finished leather; pickers; Picking bands; Vegetable tanning extracts; Fat liquors other than synthetic.

21. *Glass Ceramics*:

22. *Cement & Gypsum Products*:

NOTE: List is illustrative and not exhaustive. Clarification of details within the broad headings is the responsibility of Administrative Ministries.

FORM FC

APPLICATION FOR FOREIGN COLLABORATION TO BE SUBMITTED TO THE SECRETARIAT FOR INDUSTRIAL APPROVALS (SIA) DEPARTMENT OF INDUSTRIAL DEVELOPMENT, UDYOG BHAVAN, NEW DELHI-110011 (WITH 15 SPARE COPIES)

(*Applicants may go through Part E of the Application before filling up the Form. The application should be legible and complete in all respects to avoid correspondence/delay and rejection.*)

1. Name and registered office address of the applicant/Indian company which will implement the project. Please specify whether the company is existing or proposed. If the company is proposed to be formed give the names and addresses of the promoter(s).

2. Whether it is/will be a public Limited or a Private Limited Company.

3. (i) Whether the applicant and/or the implementing company is registered under the Monopolies and Restrictive Trade Practices Act, 1969.

   (ii) If so, whether clearances required for implementing the proposed scheme under the M.R.T.P. Act, 1969 have been obtained.

PART — 'A' CAPITAL STRUCTURE AND FORM OF MANAGEMENT

(NOTE : Information in reply to question 4, 5, 6 and 7 should be furnished in respect of the applicant company as well as in respect of the company which will implement the project.

4. Is the Indian Company controlled either directly or indirectly by non residents, if so, : Please give particulars of (i) the direct participation, and (ii) the indirect beneficial participation i.e. in the list of shareholders are there any companies which themselves have non resident shareholding ? Particulars of major share holding of 5% and above of the equity capital alone may be taken for this purpose.

5. Names of the Directors of the Board—

   (i) Foreign Nationals

   (ii) Indian Nationals.

6. Names of Selling Agents, Secretaries, Treasurers and Consultants to the company, if any, the existing or proposed and extent, if any, of foreign equity interest therein.

7. *Capital Structure*

I. Existing — *Equity* — *Preference* .....

Authorised

Subscribed

Paid up

of which

	Amount	Percentage
a) Foreign holding		
(i) Direct participation		
(ii) Indirect beneficial participation (as defined in column 4 above).		
(iii) Total (i) and (ii)		
(b) Indian holding	Amount	Percentage
(c) (i) Borrowing		
(ii) Existing debt; equity ratio in the company		

II. Proposed

Authorised

Subscribed

Paid up

	Amount	Percentage
(a) Foreign holding		
(i) Direct participation		
(ii) Indirect beneficial non resident participation (as defined in column 4 above.)		
(iii) Indian holding Total (i) and (ii)		
(b) Indian holding	Amount	Percentage

8. Whether the proposal contains any provisions which relate to matters pertaining to Company Law or which attract the provisions of the Foreign Exchange Regulation Act, 1973; if so, what steps the company has taken or proposes to be taken in this connection ?

PART 'B'—LINE OF MANUFACTURE, CAPITAL COST AND IMPORT CONTENT

9. (i) Existing business/item(s) of manufacture and the number and date of I.D.R. Act Licence, if any, D.G.T.D. Registration/S.S.I. Registration etc.

(ii) Is/are the item/items mentioned above being manufactured with foreign collaboration? If so, please give the particulars of each collaboration, including the names of collaborators.

(iii) (a) Item of manufacture/proposed activity for which foreign collaboration is applied for which full and complete technical specifications and the relevant catalogues of the product(s) proposed to be manufactured and the end use of the product.

(b) Brief description of the technology and other relevant techno economic studies.

(c) Has any letter of intent/industrial licence been obtained under the Industries (Development and Regulation) Act, 1951 for the items of manufacture for which the foreign collaboration application has been made? If so, furnish a photo copy.

(d) In case an application for an industrial licence under the Industries (Development and Regulation) Act, 1951 has been made, furnish the reference number and date.

(e) If registered with DGTD, Textile Commissioner, etc., please quote the reference and the annual capacities for which registered.

(f) Whether the proposed manufacturing programme would be in the Small Scale Sector. Furnish SSI registration No., if any, and capacities for which registered.

(g) Is there any restriction in your letter of intent/industrial licence/Registration with DGTD/SSI/Textile Commissioner, etc. regarding foreign collaboration? If so, have you taken steps to get the restrictions removed?

(h) Have you in the past applied for foreign collaboration for the same item to the Secretariat for Industrial Approvals or to any other Department in the Government? If so, furnish particulars thereof.

(i) Please state the factors which you consider favourable in respect of your application (i.e.), considerations like your technical competence including technical background, your previous experience in this line, your financial resources, other projects/products, produced by you, or implementing the collaboration.

10. Estimated value of annual production

Year	Item of Manufacture	Quantity	Ex-factory value net of excise duties	Ex-factory value after deducting landed cost of imported components
1st Year . .				
2nd Year .				
3rd Year . .				
4th Year .				
5th Year . .				
etc. . .				

11. Location of Factory :

Tehsil :—————— District —————— State ——————

12. Proposed capital cost of the project :

(a) Cost of capital equipment.
(i) Imported (landed cost)
(ii) Indigenous.

(b) If imported equipment is required, has the Capital goods application been submitted/approved? Furnish reference No. and date of application/approval.

(c) Cost of other items of capital nature *viz.*

Land

Building

(d) Working Capital

(e) Staff and labour proposed to be employed :

	Head Office	Factory	Total
(i) Managerial			
(ii) Supervisory :			
Technical :			
Non-Technical :			
(iii) Clerical			
(iv) Labour :			
Skilled :			
Semi-skilled			
Unskilled :			
(v) Other :			
Categories, if any :			

13. Estimated requirements of raw materials and components.

S. No.	Name of raw material/ component	Indigenous or Imported	Quantity	Value (cif value if imported)
1	2	3	4	5

14. Phased manufacturing programme for import substitution during the period of collaboration.

Year	Item of Manufacture	Annual Production		Percentage of cif value of imported content (*i.e.* total of all imported raw materials and components)
		Quantity	Ex-factory value	
1st Year				
	(i)			
	(ii)			
	(iii)			
	(iv)			
2nd Year				
	(i)			
	(ii)			
	(iii)			
	(iv)			
3rd Year, etc.				

PART 'C'—DETAILS OF FOREIGN COLLABORATION

15. (a) Name and address of the foreign collaborator(s) with whom the Indian Company proposes to collaborate.

(b) Please indicate the standing of the collaborator in the field, with details of collaboration already given to other countries, their export performance *vis-a-vis* domestic production, their share in the world market and direction of export (Attach latest Balance Sheet of Collaborator).

16. What will be the specific services to be rendered by the foreign collaborator in pursuance of the agreements.

17. Terms of foreign collaboration :

(a) If the foreign collaborator proposes to invest in the equity capital of the Indian Company, furnish the following details :

(i) The amount of foreign equity investment in (Rupee equivalent).

(ii) What percentage it would constitute of the total paid-up capital of the Indian Company.

(iii) Estimated annual payments on dividends and profits (gross of taxation) on the foreign investment.

(b) Nature and quantum of lumpsum payments.

	Rs.	Foreign exchange
(i) Technical know-how fees.		
(ii) Payments for design, engineering, consultancy, etc.		
(iii) Payments, if any, for use of patents, brand names, trade marks and the like.		
(iv) Any other payment of a lumpsum nature.		
Total		

(Please indicate the gross amount payable to the collaborator before deduction of Indian taxes).

(v) Indicate in each case the proposed instalments in which the above payments will be made.

(c) (i) Whether a recurring annual royalty is proposed , if so, the percentage of royalty (gross of taxes) computed as a proportion of the ex-factory value of annual production (net of excise duties) aiter deducting the landed cost of imported components and the standard bought out components, if any.

(ii) Kindly indicate the total estimated gross amount of royalty (i.e. before taxation) payable to the foreign collabortor during the duration of the collaboration.

(iii) Are separate rates of royalty envisaged on internal sales and exports ? If so, furnish the figures.

(d) Proposed duration of the agreement and the period for which royalty payments will be made.

18. (i) If this application is for the extension of an existing collaboration agreement, please indicate the period for which the collaboration has already run and attach a copy of the previous approvals and agreements.

(ii) In case of (i) above, please indicate whether you have set up any R&D Cell to absorb the know-how and the progress achieved in this regard. Please also indicate particulars of the status of absorption, adaptation, assimilation and improvement of the technology already imported. Adequate justification for acquisition of new technology, whether it is for cost reduction, quality improvement, material conservation, increase in productivity, design, addition of new items etc. may be furnished.

(iii) In case the intial approval for foreign collaboration was subject to any export obligation, to what extent such obligations have been fulfilled so far.

19. Are the items proposed to be manufactured, patented in India, if so, the dates of commencement and expiry of the patents.

20. Does the Indian Company propose to use any foreign brand name for internal sales and/or exports?

PART 'C'—OTHER INFORMATION

21. Nature of Export Franchise

(i) Please specify the names of the countries, if any, to which exports are excluded; and if so, the reasons therefor.

(ii) Please indicate if the Letter of Intent/Industrial Licence/Registration with DGTD/SSI or Capital Goods Clearance granted for this item contains any stipulations in regard to exports.

(iii) Export commitments, year-wise, which the applicant is prepared to undertake:

	Quantity	Percentage of Production	Value(FOB)
1st Year . .			
2nd Year .			
3rd Year . .			
4th Year .			
5th Year . . . . etc.			
TOTAL			

(iv) Brief details on how the applicant proposes to fulfil the export commitments:

22. Effect on balance payments during the period of collaboration agreement:

A. Foreign exchange earnings:

(i) Foreign exchange earnings based on f.o.b. value of export covered by export obligation [vide col. 21(iii) above.]

(ii) Foreign Exchange saving anticipated as a result of import substitution vis-a-vis the product.

TOTAL A : .

B. Foreign exchange outgo on:

(i) Import of machinery and equipment (cif)

(ii) Import of raw materials and components (cif.)

(iii) Dividends and profits [net of taxes, i.e. gross amount indicated in col. 17(a) (iii) above minus Indian taxes payable].

(iv) Lumpsum payments [net of taxes i.e. gross amount indicated in col. 17(b) above minus Indian taxes payable].

(v) Royalty payments (net of taxes based on col. 17(c) above taking into account the value of production in col. 10 above.]

(vi) Number of foreign Technicians proposed to be employed and payments to them (Net of taxes)

(vii) Other payments, if any

TOTAL B :

C. Net foreign exchange inflow (A—B) :

23. Give an account of the attempts made to explore alternative source or the acquisition of technology including from indigenous sources and the techno-economic considerations for preferring the particular collaboration which has been applied for.

24. In the choice of technology, have you given appropriate weightage to the least pollutant alternative, consistent with costs? If so, details thereof.

25. Please confirm that the foreign collaboratier is agreeable that the technical know-how/product design/ engineering design can also be made available to other Indian parties, should it become necessary, on terms and conditions as may be agreed to by all the parties concerned, including the foreign collaborator and subject to the approval of the Government.

26. Whether the foreign collaborator has other collaborations with any other party in India for the same or similar product; if so, give details.

27. What steps does the applicant propose to take for research and development in respect of the technology involved, engineering design, training of Indian technological personnel, and other measures for the absorption, adaptation, and development of the imported technology. Give specific details.

Signature of the Applicant

Date .....

Place .....

PART-E

Instructions to Enterpreneurs

1. Government's policy towards permitting foreign equity participation will be selective. Such participation has to be justified, having regard to factors such as priority of the industry, the nature of technology involved, whether it will enable or promote exports, and the alternative terms available for securing the same or similar technological transfer. The ceiling for foreign equity participation is 40 per cent although exceptions can be considered on merits.

2. Foreign share capital should be by way of cash without being linked to tied imports of machinery and equipment or to payments for knowhow, trade-marks, brand names, etc.

3. Lumpsum payments, if any, are normally to be paid in three standard instalments, the first instalment to be paid after the Agreement is taken on record, the Second instalment on delivery of technical documentations and the third and last instalment to be paid on the commencement of commercial production or four years after the agreement is taken on record, whichever is earlier. All lumpsum payments are subject to deduction of Indian taxes. If the Indian party so desires, the lumpsum amount sanctioned could be net of Indian taxes with taxes being borne by the Indian party.

4. The royalty will be calculated on the basis of the net ex-factory sale price of the product exclusive of excise duties, minus the cost of the standard bought out components and the landed cost of imported components, irrespective of the source of procurement including ocean freight, insurance, custom duties, etc. Royalty payments are subject to Indian taxes.

5. The royalty payable should not normally be more than 5 per cent (taxable) and will be comprised within the period of agreement which may extend to 10 years. The period of going into commercial production is included within this period of 10 years. The total lumpsum and royalty payments should not be more than 8 per cent of total expected sales (calculated on an ex-factory value basis) over a period not exceeding 10 years. It may be noted that the above should be treated as upper ceilings and the rate of royalty, the amount of lumpsum and the period of agreement in respect of individual cases would be decided by Government on a case to case basis, taking into account all relevant factors. Normally, the period of agreement would be for eight years and royalty for five years allowing three years for commencement of commercial production.

6. There should be no requirement for the payment of a minimum guaranteed royalty regardless of quantum and value of production.

7. Arrangements or clauses which in any manner bind the Indian party with regard to procurement of capital goods, components, spares, raw materials, pricing policy, selling arrangements, etc. should be avoided.

8. Remittance to the foreign collaborator should be made as per exchange rates prevailing on the date of remittance.

9. The Indian company should be free to sub-licence the technical know-how|product design|engineering design under the agreement to another Indian party, should it become necessary. The terms of such sub-licensing will, however, be as mutually agreed to by all the parties concerned including the foreign collaborators and will be subject to the approval of Government.

10. Exports shall be permitted to all countries except where the foreign collaborator has existing licensing arrangements for manufacture. In the latter case, the countries concerned shall be specified.

11. Import of capital equipment and raw materials would be allowed as per import policy prevailing from time to time.

12. The proposal should conform to the locational policy of the Government.

13. Deputation of technicians either way will be subject to prior approval of the Reserve Bank of India, in terms of number, period of engagement, remuneration, etc.

14. Foreign brand names will not ordinarily be allowed for use on the products for internal sales although there is no objection to their use on products to be exported.

15. In case the item of manufacture is one which is patented in India, the payment of royalty/lumpsum payments made by the Indian Company to the Foreign Collaborator during the period of the agreement shall also constitute full compensation for use of the patent rights till the expiry of life of the patent and the Indian company shall be free to manufacture that item even after the expiry of the collaboration agreement without making any additional payments. A specific provision in this regard must be incorporated in the collaboration agreement to be entered into between the two parties.

16. Incase any consultancy is required to execute the project, this should be obtained from an Indian consultancy engineering firm. If

foreign consultancy is considered unavoidable, an Indian consultancy firm should nevertheless be the prime consultant.

17. The agreement shall be subject to Indian laws.

Recommendation

The Committee note that although it was clear from the Incomes and investments revealed in the two completed assessments of the assessees 'A' and 'B' that they would have taxable incomes in subsequent years also, the Income Tax Officer did not issue any notice caling for the returns of income even on the assessees' failure to file their returns. It was only during Audit in February, 1979 that the failure of the ITO is not issuing the requisite notices under the Income Tax Act came to light. The Committee are at a loss to know as to how the failure occurred and how it escaped the notice of the income tax authorities for so long.

[No. 29 (Para 3.09) of the Appendix II of the 51st Report of the PAC (1980-81) (Seventh Lok Sabha)]

Action Taken

Section 139(1) of the I.T. Act, 1961 lays down that every person, if this total income in respect of which he is assessable under the Act during the previous year exceeded the maximum amount which is not chargeable to income-tax shall furnish as return of his income in the prescribed form. Section 139(2) provides that in the case of any person who, in the Income Tax Officers opinion is assessable under the Act whether on his total income or on the total income of any other person during the previous year the ITO may, before the end of the relevant assessment year, issue a notice upon him requiring him to furnish within 30 days from the date of serving of the notice, or such date as may be extended by the ITO on an application made by the assessee, a return of his income in the prescribed form. Section 271(1) (a) of the same Act lays down that failure to furnish the return shall attract levy of penalty.

2. The system followed in the I.T. Department to call for returns where they are not received under section 139(1) of the I.T. Act by the due date is to issue notice u/s 139(2) of the I.T. Act together with the forms of reurn of income may be sent in the first week of August to all such tax-payers who have not filed the returns of income voluntarily.

3. In the case under consideration, the ITO has explained to the CIT that notice u|s 139(2) was not issued because he was of the bonafide view that the ownership of the sum of Rs. 22 lakhs was dispuable. The entire sum of Rs. 22 lakhs belonged to M/s. C. J. Patel & Co. and that Raja

Chandrachud Prasad Singh & his children were only benamidars; unless this issue was finally settled it was not possible to take action to assess the assessees. But there was a human failure on the part of the ITO, in not issuing notices u|s 139(2).

4. However, there has been no loss revenue in this case as the time available for taking remedial action is upto 8 years u|s 147(a) of the I.T. Act. The assessments, since completed have resulted in demand of Rs. 1,54,626|- being raised against assesseee 'A' a tax due for the assessment years 1972-73 to 1980-81 and a demand of Rs. 7,660|- being raised against the assessee 'B' as tax due for the assessment years 1972-73 to 1979-80.

[Min. of Finance (Deptt. of Revenue O.M. F. No. 241/5/81-A&PAC-II dated 11 February, 1982]

Recommendation

Apparently the internal control, as well as the internal audit systems of the department are not working effectively. The Committee would recommend that the responsibility for toning up and enforcing these systems should be placed sparely on the supervisory officers of the level of Inspecting Assistant Commissioners and Commissioners of Income-tax. These Officers, during their periodical inspections, must ensure not only that the prescribed control records are properly maintained in the assessment ward, but also see that such records are made use of to obtain the desired results. In particular, the Committee recommend that it should be part of the duty of Inspecing Assistant Commissioners to see during their inspections that there are no glaring cases of his type where the assessees have suddenly stoped filing their returns and the Income-tax Officer has nevertheless faild to call for the returns.

[S. No. 30 (Para 3.10) of the Appendix II of the 51st Report of the PAC (1980-81) (Seventh Lok Sabha)]

Action Taken

The Ministery shares the concern of the Committee in this matter. Making inspections is one of the prime as well as mandatory duties of IACs. Some quidelines for inspections by IACs have already been issued on 1st January, 1977. It has again been advised that among other things the IAC should also examine the work of the ITO in regard to:

(i) Timely issue and service of notices of advance tax or regular assessments, specially when high demands are involved;

(ii) Completing statutory actions within the specified time limits— such as issue of notices, and completion of assessments, penalty proceedings, recovery proceedings etc;

(iii) Suitable action on audit paras;

(iv) Proper handling of important and sensitive cases.

(Approved by the Additional Secretary to the Govt. of India)

[Ministry of Finance (Deptt. of Review O.M.F. No. 241/5/81-A&PAC-II dated 11 February, 1982)]

Recommendations

4.27 The Committee have noticed that there are two methods of valuation of the unquoted equity shares of companies, namely 'break-up value method' and 'yield method'. Uuder the "break-up value method,' the value of such shares is based on the value of net assets of the company. Under the 'yield method, the value of shares is treated as equal to the principal amount which would have earned simple ineterest equal to the given yield on shares at the interest rates of giftedge securities. The principal of valuation of shares which has been adopted under Direct Taxes Acts is that the value of any asset, other than cash, shall be estimated to be the price, which in the opinion of the assessing Officer it would fetch if sold in the open market on the relevant date. So, the value computed under the two methods has to correspond to a hypothetical value on a hypothetical sale in a hypothetical market in accordance with the aforesaid principle which has been established through a number of decisions of the Supreme Court of India.

4.28. For valuation of unquoted equity shares in companies other than investment companies and managing agencies' companies, Rule 1-D of the Wealth-tax Rules, 1957 framed by the Board under section 7(1) of the Wealth-tax Act, 1957 applies. The Rule incorporates break-up value method only. Consequently, it has been provided in the rule that in making computation of the value all liabilities as shown in the balance sheet of the company and the dividends pertaining to the preference shareholders shall be deducted from the value of all its assets shown therein; a discount of 15 per cent shall be allowed to arrive at the value of the net assets. The balance value of the net assets shall be distributed over the equity shares to arrive at their value. Again, if the company has not declared dividends for 3 to 6 years, the discount allowable shall be increased from 17 and half per cent to 25 per cent.

4.29. Audit has repeatedly pointed out that where a company has undisclosed assets or where the book value of assets is much below their fair market value on the relevant date, valuation under the above provision of Rule 1D based on book value of assets only would not be in

conformity with the principle of true market value contemplated in Section 7 of the Wealth-tax Act. This defect in the Rule has not been rectified so far.

4.30. Further with reference to the said Rule 1D the Public Accounts Committee in paragraph 4.22 of their 226th Report (Fifth Lok Sabha) (August 1976) observed, "companies which do not declare dividends presumably with a particular design and accumulate profits in their reserves also derive a tax advantage...." Wealth-tax is avoided because of the allowance of discount at increasing rates, under the aforesaid Rule 1D, in the break-up method for valuing the unquoted equity shares on the grounds of non-declaration of dividends for specific number of years while, in fact, the profits are getting accumulated (without being distributed) with such private Limited Companies.

4.31. The subject matter of valuation of unquoted equity shares in investment companies and other companies was also commented upon in paragraph 72 of the Audit Report, 1977-78. In that regard, the Ministry of Finance have stated in March, 1981 that rule 1-D of the Wealth-tax Rules and Board's circular of October, 1967 were discussed by a Committee set up by the Board on valuation of unquoted equity shares of companies. The said report had been discussed by the Board and follow-up action by way of framing suitable rules was likely to be completed soon. Again, the Board have stated that they "are seized of the matter and issue of necessary instruction in *supersession* of the circular dated 31st October, 1967 and finalisation of the rules on the subject is under active consideration of the Board".

4.32. The committee regret to note that even after the Supreme Court of India Judgement in Jalan's case (86 ITR 621), delivered in 1972 the Ministry of Finance had not taken steps to amend the rule or to issue fresh instructions. The avoidable delay of more than 7 years has, in the meantime, been causing under-assesment of Wealth-tax. The Committee recommend that the Government should rectify the position without further loss of time. As pointed out by Audit in the instant case due to absence of any rule or its clarification the exchequer had lost Rs. 48,868 by way of Wealth-tax.

[S. Nos. 31 to 36 (Para 4.27 to 4.32) of Appendix II of the 51st Report of the P.A.C. (1980-81) (Seventh Lok Sabha).]

Action Taken

The draft rules for valuation of unquoted equity shares in investment companies as well as in companies other than investment companies, have since been notified on 29th August, 1981 *vide* notification No. 4194/ F. No. 155(84)/78-TPL [S. O. No. 674(E)] (copy enclosed for the

general information of the persons likely to be affected thereby. The rules will be finalised after considering the comments, if any, received in this regard.

[Ministry of Finance (Deptt. & Revenue) O.M. No. 241/4/81-A & PAC dated 17 November, 1981.]

TO BE PUBLISHED IN PART-II SECTION 3 SUB-SECTION (ii) OF THE GAZETTE OF INDIA EXTRAORDINARY
MINISTRY OF FINANCE

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

WEALTH-TAX

NEW DELHI THE 29th August, 81.

S.O.(E)—The following draft of certain rules further to amend the Wealth-tax Rules, 1957, which the Central Board of Direct Taxes proposes to make in exercise of the powers conferred by section 46 of the Wealth-tax Act, 1957 (27 of 1957), is hereby published for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft rules will be taken into consideration on or after the 15-10-1981.

Any objection of suggestion which may be received from any person with reference to the said draft rules before the said date will be considered by the Central Board of Direct Taxes.

DRAFT RULES

1. (1) These rules may be called the Wealth-tax (Amendment) Rules, 1981.

(2) They shall come into force on the 1st day of April, 1982.

2. In the Wealth-tax Rules, 1957,—

(a) in rules 1A,—

(1) in clause (g), after the words "and income from other source" the word "or whose assets comprise mainly of assets, such

as, land, building, bullion, jewellery, shares, stocks and securities" shall be inserted;

(2) for clause (1), the following clauses shall be substituted, namely:—

(1) "share regularly quoted on the stock exchange" in relation to an aquity shares of a preference share of a company means—

(i) a share quoted on any recognised stock exchange in India with regularity from time to time; and

(ii) the quotations of such share are based on current transactions made in the ordinary course of business;

(1a) "unquoted share" means an equity share or a preference share which is not regularly quoted on any recognised stock exchange in India and includes a share deemed to be an unquoted share under the Explanation to rule 1E;

(b) for rule 1D, the following rules shall be substituted, namely:—

Valuation of Unquoted equity Shares of Companies other than investment Companies.

1D (1) for the purposes of sub-section(1) of Section 7, the value of an unquoted equity share of a company, other than an investment company, shall be determind in the following manner, namely:—

(i) the value of all the liabilities as shown in the balance sheet of such company shall be deducted from the value of all its assets as shown in the balance sheet.

(ii) the net amount as arrived at in accordance with clause (1) shall be divided by the total amount of its paid-up equity share capital as shown in the balance shteet.

(iii) the amount as arrived at in accordance with clause (ii) shall be multiplied by the paid up value of each equity share and the resultant amount shall be the breek-up value of such share;

(iv) the break-up value of the share so arrived at in accordance with clause (iii) shall be reduced or increased, as the case may be, by an amount calculated as hereunder to arrive

at the value of the unquoted equity share of the company, namely:—

(a) where the average distributable income does not exceed five per cent, of the paid-up capital and reserves	the break-up value shall be reduced by an amount equal to twenty per cent thereof;
(b) where the average distributable income exceeds five per cent, but does not exceed ten per cent. of the paid-up capital and reserves	the break up value shall be reduced by an amount equal to ten per cent. thereof;
(c) where the average distributable income exceeds ten per cent, but does not exceed twenty per cent. of the paid-up capital and reserves	the break-up value shall be increased by an amount equal to ten per cent. thereof;
(d) where the average distributable income exceeds twenty per cent of the paid-up capital and reserves.	the break-up value shall be increased by twenty per cent thereof.

Explanation:—For the purposes of this rule and rule 1E,—

(i) "assets" include property of every description, movable or immovable, owned by the company, but does not include—

(a) any amount paid as advance tax under section 209A or secion 210 of the Income-tax Act, 1961 (43 of 1961);

(b) any amount shown in the balance sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset;

(ii) "average distributable income" means the average of the distributable inome of the company for the accounting year ending with the valuation date for which the relevant balance sheet has been drawn up and the distributable income of two immediately preceding accounting year;

(iii) "balance sheet", in relation to any company, means the balance sheet of such company as drawn up on the valuation date and where there is no such balance sheet, the balance sheet drawn up on a date immediately preceding the valuation date and in the absence of both, the balance sheet drawn up on a date immediately after the valuation date;

(iv) "distributable income", in relation to an accounting year of a company, means its income as per its profit and loss account of that year as increased by the amount of any reserves or

provisions not allowable as a deduction under the Income-tax Act and as reduced by—

(a) any tax payable in respect of the income so increased under the Income tax Act, 1961 (43 of 1961) and the Companies (Profits) Surtax Act, 1964 (7 of 1964); and

(b) any amount set apart by the company out of the profits of the said accounting year for payment of dividends in respect of its preference share capital;

(v) "liabilities" includes all debts owed by a company but does not include—

(a) the paid-up capital in respect of equity shares;

(b) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the valuation date at a general body meeting of the company;

(c) reserves, by whatever name called other than those set apart towards depreciation;

(d) credit balance of the profit and loss account;

(e) any amount representing provision for taxation to the extent it exceeds the amount representing the difference between the tax payable with reference to the book profits of the company and the amount of advance tax paid during the financial year immediately preceding the assessment year relevant to the accounting year;

(f) any amount representing the contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

(2) The value of unquoted equity share of a subsidiary company shall be valued in accordance with the provisions of sub-rule (1), with the following modifications, namely:—

(a) in clause (i), after the words "value of all its assets", the words "which they would fetch if sold in the market on the valuation date, or in case any rules are made for the valuation of any asset, at the value arrived at in accordance with such rule" shall be inserted;

(b) the net amount as arrived at in accordance with clause (i) of sub-rule (1) shall be further reduced by an amount equal to twenty-five per cent. of the accumulated profits of the company as appearing in the balance sheet by way of national tax liability on the distribution of dividends to the holding company.

Explanation.—For the purposes of this sub-rule,—

(i) "accumulated profits" shall have the meaning assigned to it in *Explanation* 2, to clause (22) of section 2 of the Income-tax Act, 1961 (43 of 1961) so far as it relates to sub-clause (c) of that clause:

(ii) "subsidiary company" shall have the meaning assigned to it in sub-clause (ii) of clause (b) of sub-section (1) of section 4 of Companies Act, 1956 (1 of 1956).

(3) Nothing contained in this rule shall apply—

(a) where, having regard to the facts and circumstances of the case, the Wealth-tax Officer, with the previous approval of the Inspecting Asstt. Commissioner, is of the opinion that it would not be practicable or realistic to apply the provisions of this rule to such a case.

(b) where there is an increase or reduction in the equity share capital of the company between the date of the balance sheet of the company referred to in clause (iii) of the *Explanation* to sub-rule (1) and the valuation date;

(c) to any assessment year commencing before the Ist day of April, 1982.

Valuation of Unquoted shares of investment companies

'1E (1) for the purposes of sub-section (1) of section 7, the valuation of an unquoted equity share of an investment company shall be determined in the following manner, namely:—

(i) the value of all the liabilities including such liabilities which are not reflected in the balance sheet of the company shall be deducted from the value of all its assets which they would fetch if sold in the market on the valuation date, or in case any rules are made for the valuation of any asset, at the value so determined in accordance with such rule;

(ii) The net amount as arrived at in accordance with clause (i) shall be divided by the total amount of its paid-up equity share capital as shown in the balance sheet;

(iii) the amount as arrived at in accordance with clause (ii) as multiplied by the paid-up value of each equity share shall be the value of the unquoted equity share of an investment company.

(2) Nothing contained in this rule shall apply to any assessment year commencing before the 1st day of April, 1982.

Explanation—For the purpose of rule 1D and this rule, where the quotation in respect of any equity share on a recognised stock exchange in India is found to be less than two-thirds of the value arrived at in accordance with the provision of rule 1D or this rule, as the case may be, such a share shall be deemed to be an unquoted share.'.

[No. 4194/F. No. 155(84)/79-TPL]

Sd/- S.N. SHENDE

DIRECTOR (TPL)

CENTRAL BOARD OF DIRECT TAXES

Recommendations

5.24 Under-assessment of taxes of substantial amounts have been noticed year after year, on account of mistakes due to carelessness or negligence, which could have been avoided had the Assessing Officers and their staff been a little more vigilant. Such cases of under-assessment have been the subject matter of several recommendations of the Public Accounts Committee in the past. The Committee in paragraph 5.2 of their 186th Report (Fifth Lok Sabha) had observed that the commonest mistake that has been adversely commented upon by the Committee, almost year after year, is the dropping of digits, generally one lakh of rupees either from the assessed total income or from the amount of tax payable.

5.25 Again, the Committee had observed that a mistake, commonly committed, was the wrong transcription of digit or the dropping of a digit, from a substantial amount, resulting in under-assessment of income-tax (paragraph 5.3 of the same Report). The Committee in an earlier report (51st Report, Fifth Lok Sabha), had reviewed the trend of mistakes in computing income and tax and made specific recommendations on the four main contributory factors, namely, rush of work towards the end of the year, continued inefficiency of Internal Audit, lapses of check on computation of income and the lack of counter-check on such computations.

5.26 It is evident from the executive instructions (vide para 9.12 ante) that the assessing officers and their subordinate staff are required to

carry out Internal Checks on the computation of income, value of assets and on the amount of tax resulting therefrom, as part of their regular duties and responsibilities.

5.27 Apparently the instructions issued by the Central Board of Direct Taxes are not being strictly followed by field offices of the Department. Otherwise the important instructions issued by the Board from time to time for ensuring arithmetical and transcription accuracy in the work done in various Wards, would have been enforced by the range Inspecting Assistant Commissioners during their administrative inspection and by the Internal Audit and the failures of the type noticed in Revenue Audit would not occur so frequently.

5.28 The weaknesses of administrative inspection have been the subject matter of comment by the Public Accounts Committee in paragraph 5.10 of their 186th Report (Fifth Lok Sabha) wherein they observed:

> "Another factor that came to the notice of the Committee was the weakness of inspections by the Inspecting Assistant Commissioners of Income-tax. In paragraph 1.65 of their 3rd Report (Fourth Lok Sabha) the Committee desired that instructions should be issued to the Commissioners to chalk-out a programme of inspection of all the circles at regular intervals. In reply (vide page 57 of the 80th Report) (Fourth Lok Sabha), the Ministry stated that necessary instructions have been issued in December, 1968 for programme of inspection by Inspecting Assistant Commissioners to be drawn up in such a manner so that every circle was inspected at least once in three years".

5.29 The Committee, however, note that the layout of the inspection report of I.A.C. was revised only recently in 1980 to enable the IAC to give a more meaningful appraisal of the ITO's performance and make inspections more effective.

[S. Nos. 37 to 42 (Para 5.24 to 5.29 of Appendix II of the 51st Report of the P.A.C. (1980-81]

Action Taken

Necessary instructions to the Commissioners of Income-tax have been issued by the Directorate of Inspection (Income-tax) under their Circle No. 121 (F. No. I-6/81/DIT/dated 3rd July, 1981 (copy enclosed).

[Ministry of Finance (Department of Revenue O.M. No. 241/4/81-A & PAC dated 17 November, 1981]

CIRCULAR NO. 121

F. No. I-6/81/DIT

DIRECTORATE OF INSPECTION (Income-tax)

Nirikshan Nideshalaya (Aayakar)

Grams : KARVIKSHA

Mayur Bhavan (4th floor)
NEW DELHI-110001

Dated 3rd July, 1981

To

The Commissioners of Income-tax,
(By name):

Sir,

Subject:—Action to be taken on the recommendations contained in the 51st Report (7th Lok Sabha) of the PAC on paras 1.114 to 1.115, 5.24 to 5.32—Responsibility of Administrative IAC—Instructions regarding.

In their 51st Report presented to the Lok Sabha on 30th April, 1981, the PAC has pointed out, *inter-alia,* the following lapses, irregularities and/or mistakes committed by assessing officers in making assessments which have resulted in substantial under-assessments of tax:—

(i) The explicit provisions of the Act and the instructions issued in pursuance thereof were completely overlooked and the deductions erneously allowed u/s 80-O even though the stipulated conditions were not fully satisfied [case of Gramaphone Co. of India Ltd. Calcutta—vide para 29(ii) of the CAG, Report for the year 1978-79—Direct Taxes (Pages 67-68)]

(ii) The commonest mistake every year had been wrong transcription of digit or the dropping of a digit of substantial amounts (generally one lakh of rupees) either from the assessed total income or from the amount of tax payable.

In this connection, extracts from paras 1.114 to 1.115 and 5.24 to 5.32 of the aforesaid PAC's Report.

2. In order to avoid the recurrence of such costly mistakes and obviate criticism from the PAC in future, the Commissioners are requested to

issue suitable instructions to the IACs to exercise more effective supervisory control in this regard to ensure:

(a) that the deductions claimed u/s 80-O are quantified by the ITOs with IAC's prior approval;

(b) that the instances of arithmetical and transcription inaccuracies noticed in their inspection of individual cases are duly commented upon and rectified expeditiously; and

(c) that periodical review meetings are held to promote the understanding of various problems in their proper perspective.

4. It is requested that a copy of the instructions issued by the CsIT to the IACs may be endorsed to this Directorate. The receipt of this Circular may kindly be acknowledged to Shri D.C. Taneja, DDI.

Yours faithfully,
Sd/-
(J. C. Luther)
Director of Inspection
(Income-tax & Audit)

Recommendation

5.30. The Committee note that though the case was required to be checked by the Internal Audit Party but had not been checked and the Ministry is ascertaining the reasons for this failure on the part of Internal Audit Party. The Committee would like to be apprised of the reasons so ascertained.

[S. No. 43 (Para 5.30) of Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (Seventh Lok Sabha)]

Action Taken

There was a failure on the part of the Income-tax Officer in charge of the Special Audit Party in not auditing the case. He has been cautioned by the Commissioner of Income-tax to be more careful and alert in future.

[Ministry of Finance (Department of Revenue O.M. No. 241/4/81-A&PAC-I dated 19th February, 1982]

Recommendation

The internal audit organisation continues to be weak despite the various steps taken in pursuance of the earlier recommendations of the Committee. Cases of this type involving substantial revenue continue to be reported by Revenue Audit where either the internal audit did not check

up the case at all, or it failed to point out the particular mistake. It is necessary that the Director of Inspection (IT&A), who is entrusted with the responsibility of supervising and reviewing the working of internal audit, discharges this responsibility in a manner to build up the internal audit organisation to a level of efficiency where at least the bigger cases are all checked in internal audit and checked properly.

[S. No. 45 (Para 5.32) of Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (Seventh Lok Sabha)]

Action Taken

The Internal Audit Organisation of the I.T. Department suffers from the following weaknesses:—

(a) The number of Internal Audit parties (including Special Audit Parties) is only 150 whereas the number of Audit parties of the C.&A.G. is 256. In view of this large disparity in number, it is not possible for the Internal Audit to check all big revenue cases before they are taken up by the Receipt Audit.

(b) The level of personnel working in the Revenue Audit parties is higher than that of the personnel working in the Internal Audit. The strength of a Receipt Audit party consists of:

(i) Accounts Officer-1.

(ii) Section Officer-2.

(iii) Auditor (Equivalent to U.D.C.)-1.

In Receipt Audit, the work is actually carried out by the Section Officers and Accounts Officers (UDC doing only clerical work, such as maintenance of registers, etc.), whereas in Internal Audit it is carried out mainly by tax Assistants|UDCs and Inspectors.

It is only in the Special Audit parties which Audit parties which are only 40 in number that the ITOs are also involved in the actual auditing of files:

(c) There is no incentive for the ITOs to work in the Internal Audit set-up, *vis-a-vis*, assessment work is unpopular.

With a view to improve the efficiency of Internal Audit, the following steps are being taken by the Board:—

(a) The D.I. (IT&A) is overall incharge of the Internal Audit. In addition, he has other functions to discharge. A new post

of DI. (Audit) has just been created to look after audit work, exclusively, enabling him to concentrate on audit work only.

(b) The D.I. (Audit) would be incharge of all audit work throughout the country. It is proposed to place all IACs (Audit), ITOs (Internal Audit) and Chief Auditors under his administrative control. This step is likely to increase the efficiency of the Internal Audit Organisation.

(c) It is also proposed to have 25 additional posts of IAC (Audit). This is under examination.

(d) The Ministry's proposal to sanction special pay to the ITOs working in the Internal Audit set-up has not been accepted by the Department of Personnel. However, a further attempt would be made to approach the Department of Personnel at a higher level. Without the incentive of special pay to the ITOs, the Board is of the view that the desired efficiency of the Organisation cannot be achieved.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/4/81-A&PAC dated 19th February, 1982].

CHAPTER III

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

Recommendations

Coming to the third condition the Committee find that the Ministry have taken shelter under the advice of the Ministry of Law that since the company had a copyright in the matrix, and the words 'similar property right' appearing in Section 80-0 would cover copyright also, the assessee would be entitled to the benefits under this Section. The crucial question is whether such right is similar to the right to patent, invention, model, design etc., mentioned in the Section. All these involve transfer to technical know-how, since they convey to the other party information and knowledge as to how to make a thing. Copyright relating to a matrix does not obviously involve any transfer of technical know-how. In fact, reverse is the case as the know-how for producing matrices has been obtained by the Indian Company from the foreign companies. The Finance Secretary stated in evidence that the wording of the Section as it stands would seem to cover even a case of the kind dealt with in the Audit paragraph. He, however, conceded "from the speech of the Finance Minister, it is clear to me that at the relevant point of time the intention was that the concession should be given only in cases of transfer of technical know-how and the like. It perhaps was not intended to cover copy right."

The Committee recommend that the desirability of amending the Income-tax Act may be considered, if necessary after obtaining the views of the Attorney General, on whether the Act as it stands at present really does not being out the intention of the Government fully.

[Sl. Nos. 6 & 7 (Paras 1.116 and 1.117) of the Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (7th Lok Sabha)].

Action Taken

The matter was examined carefully in consultation with the Ministry of Law. The Ministry of Law opined that as the underlying objective of the concession as enunciated in the Budget Speech of the Finance Minister is not embodied in the language of the Section and as the legal position was clear, it was not considered necessary to obtain the views of the Attorney-General in the matter.

2. The Central Board of Direct Taxes have decided that the same Committee which has already been set up under Director (O&M) for reviewing the working of Sec. 80-MM and Sec. 80-O should examine the question of amendment of the provisions of Sec. 80-O should examine the question recommendations made by the Public Accounts Committee. The Committee has been requested to submit the findings/suggestions in this regard at an early date.

[Ministry of Finance (Deptt. of Revenue) O.M.F. No. 241/5/81-A&PAC-II, dated 2nd March, 1982].

Recommendations

The Committee find that no action was taken by the Department to get the stay vacated for as long as three years. The Ministry of Law are being approached only now as a follow up of deliberations in this Committee. It is unfortunate that in spite of a number of instructions issued by the Board on this subject between 1968 and 1979 such delays continue to occur. The Committee cannot view this situation with equanimity. Continued disregard of the instructions erodes Board's own authority. The Board must, therefore, find out methods of effective implementation of the instructions and their monitoring. The Committee also consider that unless some deterrent measures are taken, the situation would not improve. As would be seen from the preceeding paragraphs, there have been a series of lapses of omission and commission on the part of the assessing and supervising officers in this case. The Committee, therefore, require that responsibility should be fixed and the officers concerned should be suitably taken up for these lapses. The Committee would like to be apprised of the action taken against the defaulting officials.

[S. No. 11 (Para 1.121) of the Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (Seventh Lok Sabha)].

Action Taken

It is a fact that affidavit-in-opposition could not be filed for the past three years or more and such delay is attributable both to the Department is well as to the Branch Secretariat of the Ministry of Law. It is not so much a case where the instructions issued by the Board on the subject were not followed by the I.T. authorities, but is a case highlighting the importance of tonning up the entire system for proper processing of litigation matters and timely representation on behalf of the Department.

2. It may also be pointed out that the arrears in the Calcutta High Court generally are higher than in other High Courts and consequently and proportionately, the arrears of Income-tax cases in the Calcutta High Court are also higher. It is a well-known fact that in the Calcutta High Court, the

writ petitions are filed and injunctions granted more easily than other High Courts. Once ex-parte injunctions are issued, it becomes difficult to have them vacated it view of the Calcutta High Court's reluctance to extend priority to Government cases. Nevertheless, attempts are being made to get ex-parte orders vacated.

3. As regards the PAC's query for suitable action against the defaulting officers, reply will follow.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 241/5/81-A&PAC-II dated 14th January, 1982].

Recommendations

The Committee find that no action was taken by the Department to get the stay vacated for as long as three years. The Ministry of Law are being approached only now as a follow up of deliberations in this Committee. It is unfortunate that in spite of a number of instructions issued by the Board on this subject between 1968 and 1979 such delays continue to occur. The Committee cannot view this situation with equanimity Continued disregard of the instructions erodes Board's own authority. The Board must, therefore, find out methods of effective implementation of the instructions and their monitoring. The Committee also consider that unless some deterrent measures are taken, the situation would not improve. As would be seen from the preceding paragraphs there have been a series of lapses of omission and commission on the part of the assessing and supervising officers in this case. The Committee, therefore, require that responsibility should be fixed and officers concerned should be suitably taken up for these lapses. The Committee would like to be apprised of the action taken against the defaulting officials.

[Sl. No. 11 (Para 1.121) of the Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (Seventh Lok Sabha)].

Action Taken

Hon'ble Committee's attention is drawn to the action taken statement by the Ministry in respect of first portion of the recommendation sent vide this Ministry's O.M. of even number dated 14th January, 1982.

2. As regards the question of fixation of responsibility for lapses, if any, it may be mentioned that relief u/s 80-0 for the assessment years 1969-70 to 1974-75 was allowed by the following officers:—

Assessment year	1969-70	—Shri N. C. Auddy
" "	1970-71	—Shri M. K. Sarkar
" "	1971-72	—Shri B. Chakraborty
" "	1972-73	—Shri B. Chakraborty
" "	1973-74	—Shri B. Chakraborty
" "	1974-75	—Shri A. Gupta

The explanations of these officers have been obtained and considered. Shri N. C. Auddy who passed the original assessment for the year 1969-70 has submitted in his explanation that all the conditions as laid down u/s 80-0 were fulfilled for the assessment years 1968-69 and 1969-70 and that the deduction under this Section was not allowed wrongly. The explanation was considered in the context that the grounds on which the Audit had pointed out the mistake in the case of M/s. The Gramophone Co., of India Ltd., no longer hold good owing to the following reasons:—

(i) The Ministry of Law has advised this Department that copy-right is covered by the provisions of Sec. 80-0. As such, it cannot be said that the assessee did not export technical know-how within the meaning of section 80-0

(ii) In the appeal against the order passed by the I.T.O. u/s 154 withdrawing the relief u|s 80-0 allowed for the assessment year 1971-72, the Income-tax Appellate Tribunal has expressed the view that the words in section which was operative during the relevant assessment year can be interpreted as meaning that the agreement to receive royalty income should be approved by the Central Government and that if the intention was that the approval should be specifically for the purpose of Section 80-0, then it would have been specified that the agreement should be approved by the Ministry of Finance, Government of India. The Tribunal's decision was accepted by the Commissioner of Income-tax, West Bengal-III.

(iii) According to the enquiries made later on, the condition that the amount of royalty should have been received in convertible foreign exchange is found to have been satisfied.

Thus, the stand taken by Shri N. C. Auddy that all the conditions laid down in Sec 80-0 were fulfilled in this case appears to be correct. As such, it was decided by the Department not to take any action against this officer

who has since retired on 28th February, 1982. As regards the other officers, they have stated that they allowed the relief by following the orders passed by Shri N. C. Auddy for the earlier years and they had no occasion to suspect that the orders passed by Shri N. C. Auddy were defective. They have further stated that according to later enquiries made, the conditions mentioned in Sec. 80-0 have been found to have been fulfilled and hence their actions cannot be questioned. Their explanation was carefully considered by this Department. It was felt that as they had merely followed orders passed by Shri N. C. Auddy, no *mala fides* can be attributed to them in allowing the relief for subsequent years, particularly when the relief has been found to be in order. As such this Department has decided not to take any action against these officers also.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/4/81-A&PAC dated 17 March, 1982)]

Recommendation

So far as Section 80-0 is concerned, the Committee find that in November, 1974 instructions were issued by Board directing the CSIT to maintain a register containing information regarding the deductions allowed based on details to be furnished by the ITOs once in a quarter—the idea being to have all the data on a centralised basis. No such information could, however, be made available to the Committee on the plea that it will have to be called out by going through the relevant assessment records. Obviously, the Board's instructions have remained on paper only.

[S. No. 20 (Para 1.130) of the Appendix II of the 51st Report of the Public Accounts Committee (7th Lok Sabha) (1980-81)].

Action Taken

The Central Board of Direct Taxes have decided that the same Committee which has already been set up under Shri S. D. Manchanda, Director (O&M) for review of the working of Section 80MM may carry out the review of the working of Sec. 80-0 also. In order to assist the Committee in its review work, Shri K. R. Gupta, Director, Foreign Tax Division in the Central Board of Direct Taxes has been nominated on the Committee. The Committee has been request to submit the fiindings of their study at an early date.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/4/81-A&PAC II, dated 16 December, 1981].

CHAPTER IV

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

Recommendation

The Committee find that the assessee Company viz., Gramophone Company of India Ltd., Calcutta engage in the business of manufacturing of gramophone records entered into agreements with three companies based in U.K for the supply of matrices to enable the foreign Companies to manufacture records from the matrices for sale outside India. The entire income of Rs. 15.24 lakhs derived by the Company during the previous years relevant to the assessment years 1969-70 to 1974-75 was allowed as a deduction under Section 80-0 treating it as income from technical know-how. The deductions were considered inadmissible by audit as the assessee Company did not satisfy the following conditions of Section 80-0:

(i) There was no evidence that the income had been brought into India by the assessee in convertible foreign exchange;

(ii) The agreements were not approved by the Government or the Central Board of Direct Taxes for the purpose of availing of this relief; and

(iii) The assessee did not export any technical know-how or skill.

So far as the first condition is concerned, the Ministry stated in the first instance that "the point does not appear to have been examined by the assessing officers, after the law was amended retrospectively by the Finance Act, 1974." At a later stage, the Committee were however informed that the royalties receivable by the assessee company for the period July 69 to June 74 were adjusted against the royalties payable by them to the foreign companies and Reserve Bank of India allowed them to remit the balance of Rs. 5139 relating to the aforesaid period. Thus, according to the Ministry, the assessee company would be said to have received the amounts in convertible foreign exchange for the said period.

The Committee observe that the Central Board of Direct Taxes had issued instructions in November, 1974 to the effect that where the money had not been brought into India in convertible foreign exchange, immediate action be taken to withdraw the relief (from the assessment year 1968-69 onwards). The Ministry's reply shows that no such review was carried

out. In fact, necessary verification was made from the Reserve Bank of India after the matter was taken up by this Committee. This indicates not only the failure on the part of the assessing and supervising officers to follow the instructions of the Board but also the absence of an effective mechanism under which information on such important matters could be concurrently collected. This is further evidenced from the fact that the Board have not been able to enlighten the Committee regarding the system devised by Government to ensure that such money is actually brought into the country in foreign exchange. The Board do not also appear to have devised any machinery to collect and collate data in respect of dues receivable any payable by way of royalty etc., for the purposes of Section 80-0 of the Income-tax Act. The Committee are of the view that in order to ensure that there is no abuse of the concession given under the Income Tax Act, the Board should maintain close co-ordination with the Reserve Bank of India and the Department of Economic Affairs and devise a system for maintenance of the requisite data so as to facilitate to proper monitoring of the scheme.

[Sl. No. 1, 2 & 3 (Paras 1.111 to 1.113) of the Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (7th Lok Sabha)].

Action Taken

The recommendations made by the Public Accounts Committee were examined by the Department of Revenue carefully in consultation with the Department of Economic Affairs. The Ministry is of the view that the present system is adequate and it is not necessary to introduce/devise any new system for maintenance of the requisite data regarding remittances of Income received abroad in convertible foreign exchange to ensure that there is no abouse of the concession given under Section 80-0 of the Income-tax Act, 1961 for the following reasons:—

(a) Currently, there are no restrictions or regulations governing inward receipts. The only requirement is that any foreign exchange earned should be repatriated within the statntory time limit set and those who are wilfully withholding such foreign exchange are liable to prosecution for violation of the provisions of FERA.

(b) For balance of payments data and certain other purposes, the Reserve Bank of India maintains data of receipts in the aggregate and according to certain well-establised classification of such inward receipts.

(c) It would not be appropriate to introduce any further procedure since such attempts would tend to inhibit inward receipts. All

such remittances are handled by Authorised Dealers and these Authorised Dealers report regularly the remittances received. Against these reports of Authorised Dealers, the Reserve Bank of India complies balance of payments and other required data.

(d) In dealing with Section 80-0, the present system is adequate and it is not necessary to introduce any new system. The precise point which any ITO has to satisfy himself before granting concession under Section 80-0 is that the income has been received by remittance from abroad and in convertible currency. It should be possible for the assessee to produce a certificate from the bank concerned that the amount has been received in convertible foreign exchange. In cases of doubt or where any adjustment of receipt was made against any outstanding payment, it may become necessary to get a certificate from the Reserve Bank of India to confirm that the adjustment was in order and had been done with their prior approval.

(e) In Instruction No. 1242 dated 29th March 1979, the Board have already emphasised that one of the conditions for the eligibility of the benefit of Section 80-0 is that the royalty, commission, fees etc., should be brought into India in convertible foreign exchange. A list of cnrrencies which are so recognised by the Reserve Bank of India has already been sent to all Commissioners of Income-tax *vide* Board's Instruction No. 797 dated 23rd November 1974. In Instruction No. 1242 referred to above it has also been clarified that all remittances to India from countries other than Nepal and Bhutan, may be treated as remittances in a convertible currency to India provided they are supported by certificates issued by Authorised Dealers in Foreign Exchange confirming *inter alia* that the remittances have been received in a manner which is in conformity with the Exchange Control Regulations.

2. This issues with the approval of the Minister of State for Revenue and Expenditure.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/4/81-A&PAC-II dated 16 December, 1981)].

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES/ NO REPLIES

Recommendation

As pointed out in the Audit paragraph, short levy of tax consequent upon incorrect deduction allowed to the assessee company amounted to Rs. 8.65 lakhs as per details given in paragraph 1.61. On receipt of Audit Objection, notices under Section 154 with a (view to rectifying any mistake apparent from record) were issued for the assessment years 1971-72 to 1974-75. Action under Section 147(b) was also taken for the assessment years 1972-73 to 1974-75 for which such action was still within time.

The Committee find that while orders have been passed fully withdrawing the benefit given under section 80-0 for assessment year 1971-72 and 1974-75 the I.T.O. has been asked to explain the reasons for not taking similar action for the intervening two years viz., 1972-73 and 1973-74. The Committee would like to be informed of the circumstances in which such lapse occurred and what action has been taken against the defaulting officers.

So far as the earlier years viz. 1969-70 and 1970-71 are concerned, the Committee have been informed that action was already time barred when the audit objection was received. The Committee consider that the question whether the failure of assessee company to obtain Government's approval to the agreement before claiming relief under section 80-0 would not amount to failure to disclose fully and truly all material facts has to be examined carefully in the light of the facts of the case. It was stated in evidence that since the amount involved is more than Rs. 50,000 and the 16 years period had not expired, it was still open for the Department to take action under section 147(a). The Committee would like to be apprised of the outcome at an early date.

[Sr. Nos. 8 and 9 (Paras 1.118 and 1.119) of Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (7th Lok Sabha)]

Action Taken

1. (i) As regards the assessment year 1972-73, the deduction was allowed in the original assessment made by the then ITO Shri

B. Chakraborty on 29.6.1973. Subsequently, the deduction was sought to be withdrawn u/s 154 through notice dated 1.2.1977 by the ITO Shri I. S. Sinha. However, he had to decide whether he was to proceed u/s 154 or 147(b) and he initiated action p|s 147(b) through notice u|s 148 issued on 18.3.77. His action in this regard has been found to be in order in as much as the order u|s 154 passed by him in respect of the assessment year 1971-72 was cencelled by the Income-tax Appellate Tribunal.

(ii) For the assessment year 1973-74, deduction was allowed in the original assessment dated 23.12.74 by Shri A. Gupta. Subsequently, Shri I. S. Sinha, ITO issued notice u/s 154 but did not pass orders thereon. As he had to decide whether he was to proceed u/s 154 or 147(b), he initiated proceedings u|s 147(b) through notice u|s 148 on the assessee's objection that the issue was controversial and outside the purview of Section 154.

2. As regards the years 1969-70 to 1970-71, it may be mentioned that a letter was originally issued to the assessee asking them to show ..cause why assessment for the years should not be reopened u|s 147 (a) of the Income-tax Act. The assessee replied objecting the proposal and pointed out that prcoeedings u/s 148 for some other years have been stayed by the Calcutta High Court. Subsequently, the Commissioner of Income-tax submitted to the Central Board of Direct Taxes proposals for reopening the assessments for the years 1969-70 and 1970-71. The proposals are under consideration of the Board.

[Ministry of Finance (Deptt. of Revenue) O.M. F. No. 241/5/81-A&PAC dated 17 March, 1982]

Recommendations

In reply to some further specific quetsions regarding the mechanism available with the Ministry/C.B.D.T. to ensure that such agreements do not, in fact, involve transfer of technology not relevant to Indian needs; that the price agreed is reasonable and it is not a cover for tax evasion; whether it would not be proper to put a total ban on the transfer of technology by foreign firms to their subsidiaries in India etc. the Committee were informed that the information was being collected and further reply would follow. The same i sstill awaited (April, 1981).

In reply to a further question, the Committee were informed that no general review has so far been made by the Department to ascertain how far the concession given under Setcion 80-MM has achieved the desired objectives.

The Committee consider that a periodical and systematic review and evaluation of the concessions given under Sections 80-MM and 80-0 is essential to ensure that the underlying objectives are in fact achieved. There is a Special Cell (calld 80 MM Cell) already in existence for scrutinising the agreements that come up to the Board for their approval. The Committee consider that this Cell should not rest content merely in scrutinising the agreements but should obtain the requisite data of all assessments under this Section from the CSIT and subject the same to critical scrutiny. The cell should, therefore, be strengthened for the purpose wihout delay.

The Committee further recommend that a general review of the working of sections 80-MM and 80-0 should be carried out by the Board with a view to finding out how far the objectives in granting the tax concessions have been subserved and what in-built safeguards need to be provided to prevent abuse thereof. Such a study should be initiated immediately and the findings intimated to the Committee within six months.

The Committee would also be interested to have the Ministry's reply to the question posed by them in an earlier paragraph (para 1.128) particularly with regard to disallowing the tax concession under Section 80-MM to Indian Companies who remit any part of their realisation on sale of technology to thier principals or to any foreign company.

[S. Nos. 18, 19, 21, 22 & 23 (Paras 1.128, 1.131, 1.132 & 1.133) of the Appendix II of the 51st Report of the Public Accounts Committee (1980-81) (Seventh Lok Sabha)]

Action Taken

Paras 1.128 & 1.133: The Committee constituted under Diretcor (O&M) has been entrusted with the work of considering the suggestion whether the concession under Setcion 80-MM should be allowed or not to subsidiaries of foreign companies in India. A final view on this question will be taken by the Board after the report of the Committee is available.

Paras 1.129 & 1.132: A Committee has been constituted under Director (O&M) to carry out the general review of the working of Section 80-MM and Setcion 80-0 with reference to their objectives.

Para 1.131: The proposal for creation of post of an Under Secretary is being processed. The Committee will be informed as soon as a final decision is taken in the matter.

[Ministry of Finance (Deptt. of Revenue) O.M. No. 241/5/81-A&PAC-II dated 27 November, 1981]

SATISH AGARWAL,

Chairman
Public Accounts Committtt,

NEW DELHI;
August 3, 1982.
Sravana 12, 1940(*S*).

PART II

Minutes of the sitting of the Action Taken Sub-Committee of the Public Accounts Committee held on 20 July, 1982 (AN).

The Committee sat from 16.00 hrs. to 17.45 hrs.

PRESENT

Shri Satish Agarwal—*Chairman*

MEMBERS

2. Shri K. Lakkappa
3. Shri G. L. Dogra
4. Shri Sunil Maitra
5. Shri Bhiku Ram Jain
6. Shri Kalyan Roy

ALTERNATE CONVENERS—(*By invitation*)

1. Shri B. Satyanarayan Reddy
2. Shri Uttam Rathod
3. Shri Nirmal Chatterjee
4. Shri Ram Singh Yadav

REPRESENTATIVES OF AUDIT

1. Shri P. P. Dhir—*Addl. Dy. C&AG of India*
2. Shri R. S. Gupta—*Director of Receipt Audit*
3. Shri L. P. Khanna—*Director of Audit, P&T*
4. Shri S. R. Mukherjee—*Director of Audit, CWM*
5. Shri G. N. Pathak—*Director of Audit, Defence Services*
6. Shri G. R. Sood—*Joint Director (Reports)*

SECRETARIAT

1. Shri K. C. Rastogi—*Chief Financial Committee Officer*
2. Shri K. K. Sharma—*Senior Financial Committee Officer*

The Sub-Committee took up for consideration and adopted the draft.. ....., 118th, ...Action Taken Reports with some amendments/modifications. The Committee also approved some amendments/ modifications arising out of factual verification by Audit.

The amendments/modifications made in the draft..... 118th,..... Reports are indicated in Annexure....II.

**** ** ***

The Sub-Committee then adjourned.

ANNEXURE II

Modifications/Amendments made by the Action Taken Sub-Committee of PAC in the draft 118th Report on Action Taken on the 51st Report of Public Accounts Committee (1980-81) at their sitting held on 20 July 1982.

Page	Para	Line (s)	Modifications/Amendments
11	1.11	15-16	*For* "This Committee"
			Read "This departmental committee"

APPENDIX

CONCLUSIONS AND RECOMMENDATIONS

S.No.	Para No.	Ministry/Deptt. concerned	Conclusion/Recommendation
1	2	3	4
1	1·4	Ministry of Finance (Deptt. of Revenue)	The Committee regret to observe that replies to five recommendations (Sl. Nos. 25—28 and 44) have not been furnished in spite of the fact that more than 14 months have passed since the report was presented to Parliament. The Committee deprecate the laxity on the part of the Ministry in furnishing replies for which a period of six months is normally allowed. The Committee desire that the outstanding replies as well as replies to recommendations which are only of an interim nature should be furnished expeditiously after getting them vetted by audit.
2	1·8	-do-	The Committee had in the 51st Report dealt with a case of irregular exemption given to the Gramophone Company of India Ltd., Calcutta engaged in the business of manufacturing of gramophone records. Audit had pointed out that the deductions allowed to the assessee company under Section 80-0 were in admissible as the conditions laid down therein had not been satisfied. No evidence was adduced before audit to show that the income had been brought into India by the assessee in convertible foreign exchange. Two other conditions *viz.* (i) specific approval by the Govt.

1	2	3	4

or the CBDT for the purpose of availing the relief and (ii) export of technical know-how or skill by the assessee company had also not been fulfilled. The Committee had in this context observed that no review had been made by the Board so as to detect similar cases of irregular exemptions having been given after the law was amended retrospectively by the Finance Act, 1974. The Board had also not been able to enlighten the Committee with regard to the system devised by Government to ensure that the money had actually been brought into the country in foreign exchange. The Committee had further pointed out that there was no machinery in the Board to collect and collate data in respect of dues receivable or payable by way of royalties etc. for purposes of Section 80-0 of the Income-tax Act. The Committee had therefore, emphasised the need for (i) maintaining close coordination with the Reserve Bank of India and the Department of Economic Affairs to prevent abuse of the concessions given under the Act and (ii) devising a system for maintenance of the requisite data so as to facilitate proper monitoring of the scheme.

The Ministry have in their reply opined that the present system is adequate and that it is not necessary to introduce/devise any new system for maintenance of requisite data regarding remittances of income received from abroad in convertible foreign exchange. It has been stated *inter-alia* that the Reserve Bank of India maintains data of receipts in the aggregate according to certain well established classification of such inward receipts. The CBDT on their part are stated to have published a list of currencies which are recognised by the Reserve Bank of India and the same has been

notified through executive instructions to the field officers. It has been further stated that in dealing with Section 80-O the ITO has to satisfy himself that the income has been received by remittances from abroad in convertible for currency and that it should be possible for the assessee to produce a certificate from the bank concerned that the amount has been receiv- in convertible foreign exchange. In cases of doubt a certificate from the RBI may be asked for to confirm that the adjustment was in order and had been done with their prior approval.

The Ministry's reply is still sllent on the question whether a review has at all been carried out with regard to the exemptions given under Section 80-O after the law was amended retrospctively by the Finance Act, 1974. The Committee desire that such a review should be carried out immediately and the findings thereof communicated to all Commissioners of Income Tax with instructions to take necessary rectificatory measures. The Committee reiterate the need for keeping close co-ordination with the Reserve Bank of India and the Department of Economic Affairs in such cases so as to make sure that income from export of technical know-how is actually brought into India in convertible foreign exchange before any relief is allowed to the assessee under Section 80-O. The Committee further reiterate the need for devising an effective mechanism in the Board so that data/information on such important matters can be currently maintained and proper monitoring/evaluation of the scheme becomes easy.

3	1.11	-do-

In Paragraph 1.132 of the 51st Report, the Committee had emphasised that a periodical and systematic review and evaluation of the concessions given under Sections 80-MM and 80-O was essential to ensure that the

1	2	3	4
			underlying objectives were in fact achieved. The Committee had also emphasised the need for strengthening the Special Cell (called 80-MM Cell) which is charged with the responsibility of scrutinising agreements that come up to the Board for approval. The Ministry have stated that a committee has been constituted under Director, O&M to make a general review of the working of sections 80-MM and 80-O with reference to their objectives. This departmental committee has also been asked to consider the question whether the concessions under Section 80 MM should at all be allowed to the subsidiaries of foreign companies in India. The Committee desire that the study should be expedited and its findings intimated to them.

P.A.C. No. 906

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