[अध्यक्ष महोदय]

है। लेकिन मैं आपसे यकीन के साथ कह सकता हूं कि इस तरह से पार्लियामेंट नहीं चल सकती कि जिसकी मर्जी हो खड़ा हो जाये और जब जो चाहे कहता चला जाये। यह बात गलत है।

By the presentation of the petition, heavens have not fallen. It is a petition, they have the right to present it. To that you object and then you change your objection to a point of order, and you accuse the Speaker also on these minor matters. You try to intimidate the Speaker.

मैं भी बड़ा ढीठ स्पीकर हूं कि मेरी रोज बेइज्जती होती है फिर भी यहां बैठा हूं। मैं अक्सर सोचता हूँ कि.....

श्री अटल बिहारी वाजपेयी (बलरामपुर): ऐसा न कहिये।

अध्यक्ष महोदय : आपने मुझको इतना थिक स्किन्ड बना दिया है इस चेयर पर बैठ कर, लेकिन यह बहुत बुरी बात है कि जिसकी मर्जी जो चाहे कहता चला जाये कि आपने यह नहीं पढ़ा, आपने यह नहीं किया। अगले दिन भी इसी तरह से चल रहा था। The dignity and decorum of the Chair are your own, not mine.

12.37 hrs.

TAXATION LAWS (AMENDMENT) BILL—*contd.*

SHRI S. S. KOTHARI (Mandsaur) : On account of the rise in prices and inflationary conditions, the common people in this country and the middle classes have been very hard hit. With every Budget, fresh taxation is added, and it becomes more difficult for them. Therefore, I would submit that the tax-free limit should be increased to Rs. 6,000. This is an eminently reasonable proposal, and I hope that the Government and the Minister will very seriously consider it. Its prices continue to rise, the real value of the tax-free limit goes down; the limit, therefore, should be increased to Rs. 6,000.

Because of the large number of small cases that the ITOs have to deal with, they are not able to devote sufficient time to the bigger cases. Therefore, if the exemption limit is increased, the ITOs would have more time to concentrate on the bigger assessees, among whom probably evasion is more prevalent than among the smaller assesses.

Besides, in the case of the small assesses, the ITOs make disallowances indiscriminately and add say Rs. 200 on one item and Rs. 500 on another item. The consequence is that unnecessarily the assessee's burden increases. In view of this, I believe that instructions should be issued to the ITOs that additions should not be made unless they are actually justified.

I would like to refer to one clause in this Bill where the Select Committee has provided that the ITOs may not call the assessee, but may just make the assessment on the basis of his return. Probably the idea is to give power to the ITO to dispose of cases without referring to the assessee. If the ITO is given power to disallow certain items without referring to the assessee it is great injustice to the assessee; I think there should not be any add-backs to which the assessee may have any objection.

In another provision, the penalty provided for non-filing of income-tax returns is rigorous imprisonment. Suppose some colleagus of the Hon. Minister forgets to file a return, is he going to prescribe rigorous imprisonment ? This is not fair; failure to file a return should not entail this punishment. If a petty trader or some other person with an income of Rs. 6,000 or Rs. 10,000. not conscious of all these liabilities does not file a return, according to this provision, he is liable to rigorous imprisonment. This is a harsh provision. This punishment may be justified in the case of those who evade large amounts, not for failing to file the return.

Only in the case of those persons who evade payment of tax amounting to Rs. 10,000 or more this provision could be made to apply. Personally I would prefer that in civil laws there should be no provision for rigorous imprisonment. Fines would meet the ends of justice.

Committee after committee is appointed every year. Has some committee enquired into the entire tax structure ? Some basic realisation must dawn on the Government. The tax structure should be such that society thinks that it is fair and reasonable and it is a duty to pay those taxes. Otherwise you can never evasion. Human nature is such that if you tax 80 per cent or 93.5 per cent or 100 percent that a person earns, most persons who earn money at that level are not going to pay it. Government's taxation policies had turned many honest persons in the country who paid their taxes normally into dishonest persons. Let us have a rational and good tax structure and then if people evade taxes, you can levy hersher penalties. I say that tax evasion must be punished but I also say that tax structure should be such that people in general feel that it is a rsasonable tax and that they should pay.

With regard to the attack on the Hindu undivided family from the taxation point of view, it is necessary that the whole concept of Hindu undivided family should not be destroyed and denigrated. There are many dependents-widows, minor children and others who are supported by this institution. If you destroy this concept or restrict it you will be doing harm to our society.

The Board is given the power to publish only those instructions which it thinks nceessary to publish in the public interest. If the Board gives any instructions with regard to the mode of assessment, why should not the assessees know them ? There must be some change in the attitude of the Goverement. The assessing officer or the Central Board must consider itself as a quasi judge and dispense justice in respect of tax. They should not try to favour the revenue and should not collect more than what is due to revenue; they should also penalise the assessees and should recover no more than what is due from them. Just as the court dispenses justice, so also the incom-tax department must be just. If that is the attitude, there is no reason why the Central Board should not give publicity to its directives and instructions to the officers.

The last point, with which I shall conclude, is this. With regard to amortisation of preliminary and pre-operational expenses of limited companies, there has been a long standing demand and I think that the Government has given a reasonable concession. But what the Select Committee has provided, I think, is not sufficient. It has excluded lump sum payment technical knowhow, expenditure on amalgamation or merger, pre-production administrative expenses and so on. I think these expenses are all reasonable expenses which a company has to incur and I think these should be allowed. Eiiher they should not be limited, or the limit should be five per cent of the project cost, or whatever is actually incurred should be allowed. I think the provision is in the right direction.

Finally, I would again emphasise that with regard to smaller assessees, they should be given a fair and better treatment, and the exemption of limit should be raised to Rs. 6,000, and the authorities should adopt a reasonable attitude in the matter for the dispensation of justice as between the assessee and the department.

MR. SPEAKER : May I bring to the notice of the Hon. Members that the balance time for discussion is only 25 minntes which are now left, and that the time we had fixed for the clauses and the third reading was two hours out of the total of six hours. So, we have tried to split it in the following order : DMK 9. CPI 7, PSP 6, BKD 3, out of the time left now. Already, there is still some more time for Congress (O), 19, and Unattached nine. The Jan Sangh has taken more than its share, I think. This is the approximate time, and I hope you will be able to keep the time, so that we may finish the Bill in time.

श्री कंवर लाल गुप्त (दिल्ली सदर) : एमेंडमेंट्स कब डिसक्शन में आएंगी यह तो बता दीजिये ।

MR. SPEAKER : When the Minister finishes his reply to the general discussion and the motion that the Bill be taken into consideration is passed.

श्री कंवर लाल गुप्त : आपने कोई जवाब आज न देना हो तो मैं बैठ जाता हूँ । हमारी एमेंडमेंट्स हैं, हम आ जाएं उस वक्त, इस वास्ते मैंने पूछा था ।

अध्यक्ष महोदय : आप गलत रास्ते पर चल रहे हैं और गलत आदमी से पूछ रहे हैं ।

श्री कंवर लाल गुप्त : एमेंडमेंट्स कब डिसक्शन में आएंगी यह गलत है तो मैं बैठ जाता हूँ ।

अध्यक्ष महोदय : आप इसके बारे में खुद भी तो अन्दाजा लगा सकते हैं ।

श्री कंवर लाल गुप्त : आप स्पीकर हैं, इस वास्ते पूछा है ।

अध्यक्ष महोदय : इस लिए मैंने कहा है कि आपको समझ जाना चाहिए कि इसके बाद आएंगी । बार-बार क्यों पूछते हैं ।

श्री नरेन्द्र कुमार साल्वे (बेतूल) : अन्दाजा नहीं, आप निर्णय दें ।

MR. SPEAKER : 25 minutes are left, and I have divided the time partywise. That is all. You will have to take it as it is. Mr. Nambiar.

SHRI NAMBIAR (Tiruchirappalli): Mr. Speaker, Sir, I find from the proceedings that on the main feetures of this Bill, many Hon.Members have supported the measure, and eminent Members who are supporters of the vested interests have hailed this Bill as a boon, and the last speaker said.

SHRI N. K. P. SALVE : Your party has supported it.

SHRI NAMBIAR ; You will follow where I differ with you. The last speaker said that the amortisation granted should be raised to five percent. This question of amortisation is a new feature in the Indian taxation law, It was in 1955 that the development rebate was started, and it still continues. Amortisation is another tax concession that is given to the corporate sector, the big companies and there is no justification whatsoever to do so. After all, this Bill has come out of the report of Mr. Boothalingam and the Adminastrative Reforms Commission. In Mr. Boothalingam's report, the key-point raised by him was this: that if there is to be a better taxation method, there must be a change of policy involved. I shall quote what he said in so many words so that there may not be any misunderstanding:

> "At the outset, I must repeat that any worthwhile rationalisation or simplification will be possible only if certain changes in Policy are made."

There is no attempt to make any change in Policy. Under the cloak of simplification and improvement, they have brought in stealthily this amortisation clause, giving another concession. That is my main objection to this Bill. The policy change must be progressive, for the benefit of the common man. Wh hear so much about their socialist pretensions from the ruling clique and the Prime Minister. In her last budget speech, the Prime Minister said that the concentration of wealth in fewer hands must be discouraged and abolished. Ever since 1961 when the Income-tex Act was codified, there have been several reports saying that there should be a better method of collecting taxes fully and avoiding concentration. But in these 10 years, nothing has been done.

We had several committees and commissions like the Monopolies Enquiry Committee, Committee on Income Distribution, Licensing Committee, Hazari Commission, etc. All their reports show that in India there is rapid development of monopolists at the cost of the common man and tax evasion is of a high order. If Government wanted to do something towards establishing a socialist society, they could have changed the entire taxation

structure and brought in a policy that would go along with their professions. If you go through this Bill carefully, you will find that it is not doing anything for the common man, but it is doing everything to help the monoppolists to get more and more income by way of profit.

In the early fifties, Prof. Kaldor stated that there was tax evasion to the tune of Rs. 200 crores every year in this country. At that rate, for 20 years, it comes to Rs. 4000 crores, which exists in the form of black money. The total money circulation in the country is about Rs. 5000 crores. Black money is Rs. 4000 crores. That means they are running a parallel economy in this country, leading to all kinds of economic evils like high prices etc. The common man's income is being hit very much. This Bill was introduced in 1969 and after that, the Prime Minister made her budgeet speech in 1970. Even after that, this Government is pursuing this retrograde and reactionary policy and giving further concession in the form of amortisation to the corporate secter.

In February 1970, the Prime Minister had given figures. The total tax collected from excise duties alone came to Rs. 1679.34 crores whereas the total tax collected from the corporate sector was only Rs. 342 crores, collected from 26,000 compnies. This shows that the indirect taxes on the people are very high but tax on companies is shrinking and the gap is on the increase. In 1948 the total indirect taxes came to only Rs. 499 crores. During these 20 years, it has gone up five times. This Government is always hitting the common through excise duties and indirect taxes and giving concessions to the companies, so that the companies can have more of black money through tax evasion. This is the tragedy. I accuse the government of being partial and favourable to the companies.

Then I come to the question of allowing this amortisation which is unreasonable. What are the items which the corporate sector gets from the government at the cost of the exchequer ? The corporate sector is getting loans from the government and public institutions, under-writing of shares by LIC, Finance Corporations, State Bank and other institutions, export incentives, development rebate since 1955, depreciation at abnormal rates and import of foreign machineries and know-how on credit. Who pays for all this ? Of course, the tax-payer through indirect taxation and the benefit would accrue to the management of monopolies. They cheat the people and save more money through many malpractices to which the government is a party today. This amortisation is going to be a premium on wasteful expenditure and it should be allowed.

If Covernment say that they are following the recommendations of the Bhoothalingam, Commission, I would say that Commission nas made some other recommendations also. Why is it that Government is not following them ? For instance, on page 38 it has stated that development rebate has to be scrapped for which notice of three years has to be given. It says :

> "It appears to me therefore that the present is the most opportune moment for giving clear notice, as Government have already contemplated, that the development rebate will cease after three years."

Even though that report was submited in 1967 till now that notice has not been given. Over and above this development rebate now this concession of amortisation is given which is not justified.

Similarly, on page 29 there is reference to export incentive rebate. For want of time I will not read it. Nothing has been done on that recommendation either.

Bhoothalingam is not a socialist. He is a bourgeois economist who served the ruling clique of the present monopoly government. He is a bureaucrat as well and I have no soft corner for him. When an economist like him has made such a recommendation, government could have blindly accepted it because he is not a socialist. But it was not done.

Then, Bhoothalingam Committee had recommended a ceiling of Rs. 7,500 for income tax. It had stated that the mony collected from the lower income group is

[Shri Nambiar]

very little and the work involved in collecting it is too much. He says :

> "For both economy and on practical administrative grounds I would, therefore, strongly recommend a substantial raising of the exemption limit and would suggest that the limit may be fixed at Rs. 7,500 for individuals and Rs. 10,000 or 11,000 for Hindu undivided families."

Government could have accepted this recon mendation.He further adds that while the loss by this measure would be Rs. 10 crores or 12 crores the expenditure on collection would also go down because the number of tax payers in the register will be reduced by about 1.7 million.

13. hrs.

Therefore, according to Shri Bhoothalingam, the ceiling should have gone up to Rs. 7,500. He says :

> "by expeditious disposal of appeals, better investigation etc., will lead to increase of tax collection by Rs. 100 crores for some years besides an immediate increase of about Rs. 200 crores merely by finalisation of pending assesments."

This is a benefit that the Government would get to the extent of Rs. 200 crores if it gives up Rs. 10 crores and saves the lower income group. This is the better aspect of Shri Bhoothalingam's report. This was not accepted. Nothing beneficial to the people or socialistic pattern is accepted. Therefore I oppose this move and I would request the Government to come forward with a consolidated Taxation Bill and not press this Bill.

Mr. SPEAKER : I have sent Shri Kalita's request to the Minister to make a statment at the earliest.

SHRI DHIRESWAR KALITA (Gauhati) : Thank you, Sir.

13.01 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock

The Lok Sabha re-assembled after Lunch at seven minutes past Fourteen of the Clock.

[SHRI SHRI CHAND GOYAL *in the Chair*]

SRI E. K. NAYANAR (Palghat) : Mr. Chairman, Sir, I have received a telegram from my constituency that even now the P & T officials are taking repressive action. The telegram reads :

> "Palghat Co-ordinating Committee of P & T Union records emphatic protest against Government's repressive measure in compulsorily retiring U. Ramaunni Nair. Sub-Postmaster Nemmara."

Sir, not only here, but in other towns also some of the employees who took part in the 1968 strike are even now being want only transferred to other distant places and the officials are taking revenge against the employees. Even now the P & T Officials in Kerala have prepared a scheme to reduce the number of postal delivery systems. If this scheme is implemented, 30% of the 8500 extra-departmental employees will be retrenched. I want to know whether the Government is aware of this and the compulsory retrenchment affair and I appeal to you, Mr. Chairman, to convey this to the concerned Minister.

SHRI JYOTIRMOY BASU : Mr. Chairman, Sir.....

Mr. CHAIRMAN : It should not become the practice that 2 O'clock is treated as a Zero Hour. I can understand cases of exceptional importance but let this not becomes a routine. Since you have already had an opportunity in the forenoon, there is no justification for you to rais it now.

SHRI JYOTIRMOY BASU : May I make a submission, Sir, If you look into the records during this session, you cannot find that even one session where in the afternoon I had an opportunity to speak. You have already allowed one member.

I have given a notice under Rule 377 to raise an important issue which has come in the Press involving a member of this House, Mr. Ashok Sen, the former Law Minister.

MR. CHAIRMAN : That matter you raised in the morning.

SHRI JYOTIRMOY BASU : What a seriouse matter, Sir, it is !

A man was repeatedly kicked and as a result he was shifted to hospital for treatment. It is a shameful thing.

MR. CHAIRMAN : You raised this matter in the morning. What is it you have got, Mr. Jha ?

श्री शिवचन्द्र झा (मधुबनी) : सभापति जी, आपने पढ़ा होगा अखबारों में कि बरौनी के रेलवे गोदाम में आग लग जाने से एक करोड़ से ज्यादा की सम्पत्ति नष्ट हुई है। इसके मुताल्लिक मैंने काल अटेंशन नोटिस भी दिया है—वह मंजूर हुआ या नहीं इसकी मुझे सूचना नहीं है। मैं तो कहूँगा कि इनके इशारे से आग लगी है। इससे साफ हो जाता है कि रेल मन्त्रालय बिल्कुल इनएफीशिएन्ट है। बावजूद इसके कि सदाचार के पक्षपाती नन्दा जी इसके मन्त्री हैं, न केवल बरौनी बल्कि कटिहार और समस्तीपुर, होल वेलट का सारा रेलवे एडमिनिस्ट्रेशन करप्ट है। .....(व्यवधान).....

SHRI JYOTIRMOY BASU : 24 Catering Employees are served with notices. The whole Railway Administration is going to dogs.

श्री शिव चन्द्र झा : मैं चाहूँगा कि या तो रेल मन्त्री आज इस पर अपना बयान दें या फिर मेरा काल अटेंशन मंजूर किया जाये। सरकार जांच करके पूरी स्थिति से इस सदन को अवगत कराये। यह बड़े दुख की बात हुई है।

एक दूसरी बात मुझे और कहनी है। अखबारों में भी यह बात आ गई है कि चौथी योजना का साइज कट किया जा रहा है बगैर इस सदन को अपने कान्फिडेन्स में लिए हुए। यह बड़ी हैरानी की बात है। मैं चाहूँगा कि चौथी योजना पर जीघ्र यहां पर बहस शुरू की जाये ताकि हम उस पर अपने विचार रख सकें और कौथी योजना में किसी कटौती को रोका जा सके।

MR. CHAIRMAN : Please resume your seat, Mr. Jha.

Mr. Jha, there are two matters which have been raised.

Such matters cannot come up like this at this hour. You seem to be under some misapprehension, that this two O'clock is the Zero-hour. You may be thinking that you can raise any matter. It is not so. You are, I think, already aware that Five-year Plan is coming up for discussoin in this House. 15 Hours have already been allotted for this discussion. So, there is absolutely no occasion for you to raise this matter again and again in this House.

So far as the observations of Mr. Nayanar are concerned, the Hon. Minister Mr. Parthasarathy, has takens note of what all you have said. Since Mr. Basu had raised the metter in the forenoon, there is no need to raise it just now.

SHRI JYOTIRMOY BASU : Would you be kind enough, Sir, to direct the Minister to make a statement ? Let him enquire into the matter and tell us what remedy he is going to take.

MR. CHAIRMAN : Shri Vidya Charan Shukla. You may reply to the Debate now.

TAXATION LAWS (AMENDMENT) BIIL *Contd.*

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI VIDYA CHARAN SHUKLA) : Mr. Chairman, Sir, I am very thankful to the Hon. Members who tool part in this Debate and who have made valuable points.

As I said in my introductory remarks, while moving this Bill for consideration, the Select Committee went into this Bill

[Shri Vidya Charan Shukla]

very thoroughly and they have made certain very important changes.

We have accepted most of them and they are before the House now.

Sir, before I commend this Motion for consideration of the House, I would like to touch upon a few points which were made by Hon. Members during the consideration of this Motion.

The Hon. Member, Shri Dandeker and some others pleaded for raising the limits that we have allowed tax-free for foreign technicians from Rs. 4,000 to at least Rs. 7,000 or Rs. 8,000. Sir, the Hon. Members know that this limit that has been given only to import technology and to import know-how in such fields where it is absolutely not available in this country. And, it is as a matter of encouragement that this provision has been made in the Bill.

It is not as if anybody who wanted to import a technician who cost more than Rs. 4,000 cannot do so. If any company wants to manufacture some sophisticated equipment or some equipment which is not available in the country, the technical know-how for which cannot be found in the country, that company can get a foreign technician and pay him Rs.7,000 or Rs. 8,000. There is no bar to that. The only difference is, they will not be able to get that tax-concession which is admissible under this Clause of this Bill. But they will be definitely entitled to deduct that salary that they give to the technician as their legitimate business expenses. We have carefully calculated this matter, and we have seen that if in a widely held Indian company, a technician is imported and he has to be paid Rs.7,000 or Rs. 7,500, the net incidence of tax to the company would came to about Rs. 500 p. m. and not more than that. So, there is not much force in saying that we want to limit the technical know-how or the technical feasibility or the importation of such technical know-how to only Rs. 4000. Rs. 4000 is only given as a matter of encouragement, and it does not put any ceiling on the salary that is to be paid to the people who have to be imported for such purposes.

Another point on which many Members spoke was about amortisation of expenses. As has been rightly observed, this is a new concept that we are introducing in our taxation law for the first time, and, therefore, we want to go rather cautiously in this matter, and we want to see how it is utilised. If it is utilsed mainly for the purpose of development of new industries in a better way and to further rapid industrial growth without concentrating unduly economic power in a few hands, and without misutilisation of this provision, then we can consider further items and other items of expenditure in this respect later on in future years. But if this is utilised as a tax shelter by companies here or by such people as are inclined to do things like that, then we shall have to see how we can counteract that kind of misuse of this salutary provision that is being made. Since it is being introduced for the first time, I would rather be cautions, and I would appeal to Hon. Members to allow this experiment to go on for a year or two and see whether this meets the object for which it has been introduced, and if it does, then we shall be able to consider further matters and items in this respect.

The third point which many Members made was about the approval of the Board of Direct Taxes of the concerns which would qualify to perform the functions regarding sophistication, expenses on project reports, feasibility reports etc. It is not as if the Board itself either rejects or approves of such companies. We in consultation with the concerned Ministry which deals with these technical matters will be deciding the issue; for instance, if it is a matter relating to petroleum and chemicals, we shall consult the Ministry of Petroleum and Chemicals, and if it is a matter relating to mines and metals, we shall consult the Ministry of Mines and Metals; we shall consult the relevant Ministry and with their concurrence, we shall decide upon the approval or disapproval of these concorns. This approval provision has to be kept. Actually this matter was debated upon in the Select Committee at great length, and it was felt there also that it should not be left completely free. Otherwise, there could be an unholy collusion and this provision could

be misused. To prevent this kind of misuse, this provision has been introduced and I think the House should support the provision that has been made.

Some Hon. Members have criticised in the course of their speeches as well as in their minutes of dissent that instead of 21 per cent of amortisation, we should raise it to 5 per cent. The argument that I gave earlier holds good in this particular matter also. Let us see how it operates, and then we shall consider this, and for the time being, as far as I can study the matter and the effeet of this on our taxation, I think $2\frac{1}{2}$ per cent is a very fair limit that has been put, and we should give it a trial.

SHRI NAMBIAR : Does he want to increase it to 5 per cent later on ?

SHRI VIDYA CHARAN SHUKLA : We have no such intention.....

SHRI NAMBIAR : Let him not yield too much to these iudustrialists.

SHRI VIDYA CHARN SHUKLA : We have no such intention. I have said that this is a thing that we consider fair and reasonable, namely $2\frac{1}{2}$ per cent, and I want that we should see how it goes on and then we can consider other suggestions by no means am I making any commitment or giving even a promise to consider the question of raising it to 5 per cent.

SHRI NAMBIAR : I am for not giving it at all while he is indirectly giving another loophole.

SHRI VIDYA CHARAN SHUKLA : We have no closed mind on any subject.

Another point made was that the benefit of amortisation of expenditure should be given to foreign companies also which distribute their dividends in India. I explained while moving for the Motion for consideration that this would not be fair and we do not want to encouroge foreign compnies by such tax concessions, even though they distribute their dividends in India. Therefore, I am unable to accept it.

Very many members, particularly Shri Salve, Shri K. L. Gupta, Shri Dandeker and others including Shri B. S. Sharma, have appended notes of dissent regarding cl. 16 about HUF. This is a question which will have to be considered in its totality; it cannot be considered in a very narrow manner. Here the loophole we want to plug is this ; whenever anybody wanted to divide his tax liability or reduce its quantum, he would not directly transfer it to his or her spouse or to a minor child but put it in the hotch-potch of joint family and then partition it. To prevent this kind of thing, we have introduced this new provision. But it has been pointed out by Shri Salve and others ; if you want to prevent this partition, why do you want to tax the preperty or the income which is transferred to the hotch-potch of joint family and not partitioned at the end among the transferees ? The simple answer is that to make this provision completely fool proof we have to do this. Otherwise, there can be instances where the property is transferred to the HUF and it is not immediately partitioned. It can stay there for several years, and after some years the thing gets so very badly mixed up with the rest that it is very difficult to find out which property has been partitioned and which has not been. There can be partial pariition; there can be complete partition; there can be all kinds of things. Therefore, I feel that in case we want to make this provision completely foolproof, we will have to keep it as we have put it here. This was discussed in the Select Committee. Hon. members who are forceful advocates of the point did their best to convince the Committee, but the majority of the Committee, did not feel convinced, and they have retained the provision as it is. I would commend this provision as recommended by the majority in the Committee to the House.

The Select Committee also went at great length into the provision of providing amortisation for expenditure of shifting an industrial undertaking from one State to another. This point was also touched on by me while moving the motion for consideration. The Select Committee in its report has also gone into details as to why it did not agree with this. In short, if this is allowed, it will lead to unhealthy trends in industrial development. Therefore, I do not think, I am in a position to accept any amendment in this behalf.

[Shri Vidya Charan Shukla]

Shri N. K. Sanghi and several others made the point that it is anomalous that there should be punisment of rigorous imprisonment for failure to file return in time when there is no such provision for such imprisonment for a person who has filed his return but has cancealed his income in such return. This is not true state of affairs.

SHRI N. K. P. SALVE : He has withdrawn that statement.

SHRI VIDYA CHARAN SHUKLA : If he has withdrawn that statement is all right, but Hon. Members know that there is a provision of such punishment, and therefore, this provision that has been kept here is perfectly in keeping with the scheme of things of the parent act.

Some comments have been made, and some Minutes of Dissent have been appended to the Report of the Sclect Committee regarding the new procedure of summary assesment. In this particular matter we are considering certain amendments that have been moved by Hon. Members, and when the clause by clauuse discussion is taken up, I shall be able to give the standpoint of the Government.

About benamidars, certain Members said that in certain laws, the institution of benamiders has been recognised. It may be so, but in the taxation law we do not wish to encourage this institution of benamis at all, and, therefore, it would not be possible for us to accept the amendment regarding permitting *benamidars* or allow firms to register themselves as registered firms even though they have benami partners.

There are many other observations that have been made by Hen. Members, but I find that these Hon. Members have also moved amendments regarding these points, and so, instead of taking up the time of the House, I shall explain our stand when the amendments are taken up.

I commend the motion to the House.

MR. CHAIRMAN : The quesstion is :

"That the Bill further to amend the Income-tax Act, 1961, the Wealth-taxt Act, 1957, the Gift-tax Act, 1958 and the Companies (Profits) Surtax Act 1964, as reported by the Select Committee, be taken into consideration. '

The motion was adopted.

Clause 2—(Amendment of section 2 of Income-tax Act, 1961.)

SHRI N. DANDEKER (Jamnagar) : I beg to move :

Page 2,—line 4,—

for "in clause (1),"— substitute— "(a). in clause (1),—" (58)

Page 2,—

after line 37, insert—

'(b) after clause (23),the following clause shall be, and shall be deemed always to have been inserted, namely:—

"(23A) 'Hindu Undivided Family' includes any group of Hiudus deemed to be joint family under section 16 of the Decree promulgated on 16th day of December, 1880, by the then Government of the erstwhile Portuguese territories of Goa, Daman and Diu, and in force immediately before the 20th day of Decenber, 1961, in the Union Territory of Goa, Daman and Diu." (59)

SHRI BENI SHANKER SHARMA (Banka) : I beg to move :

Page 2, lines 23 to 26,—

Omit '(whether known as a municipality municipal corporation, notified area committee, town area committee, town committee or by any other name)" (87)

Page 2, line 27,—

For "ten" *substitute* "fifty" (88)

SHRI N. DANDEKER : There are two amendments in my name. The first one is purely a formal one, the object of

which is to convert the present Clause 2 into sub-clause (a) of clause 2, and the next amendment, which is the important part, inserts a sub-clause (b) to the effect that the concept of the Hindu undivided family should include the particular type of Hindu undivided family that prevails in Goa within cartain limits.

Before I go into this, I would like to explain the context of this amendment. Under the Indian Income-tax Act, a person is defined as including a Hindu undivided family, but the Hindu undivided family itself is not defined, and it is not defined for good reasons. Thre is a variety of Hindu undivided families recognised by law, and all of them are also in practice recognised by the income-tax authories, the two main branches of the Hindu undivided family being the Dayabhaga and the Mitakshara. The Mitaksharah as several schools and sub-schools. Also, there are some forms which, by custom, usage or some other situation, are impartible familes stand soon.In that context attempts were made by me personally commencing nearly two years ago to suggest this to the Central Board of Direct Taxes that the form of Hindu undivided families prevalent by the Acts in force in Goa should also in practice be recognised as Hindu undivided family unit for the purpose of assessment, thereupon, actualy, any amendment of the law would have been unnecessary. They have been dithering about this. I do not think their minds are very clear on the subject as to whether they should accept them as Hindu undivided family or perhaps they are a little reluctant to accept this particular concept because of the consequences it might have in complicating the law relating to Hindu undivided family assessments a little further. The fact remains that so long as a person under the Income-tax Act includes a Hindu undivided family and, as I shall presently show, so long as the Hindu undivided family concept prevalent in Goa under the laws in force in Goa is also there, it seems to me utterly unjustifiable that particular form of H.U.F., that is the Goa Hindu undivided family, should not be recognised.

I shall begin by a technical exposition of this amendment by bringing to the notice of the House and of the Minister, though I hope he is alredy aware of it, that the present position as regards the laws in force in the Union Territory of Goa, Daman and Diu is countained in the Proclamation, from which I shall only read one paragraph, 4(1). The Proclamation was issued in March 1961 aad it says that : All laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force until amended or repealed or replaced by a competent legislature or other competent authority.

The position therefore is this. A number of our laws, either Central laws, or for convenience various provincial laws like those of the Maharashtra Government and so on, have from time to time been made applicable to that Territory. To the extent that they had been made so applicable, the existing laws had been displaced. Among the laws so applied are the Income-tax Act, Wealth Tax Act, Gift Tax Act and so on; but the law prevalent in Goa in relation to H.U.F. of Goa has not yet been displaced by any lagislation passed in this country. That law is contained in a Decree of the erstwhile Portuguese Government from which I shall read only one particular provision section 16. It is a decree issued in 1880. The particular clause of the decree to which I shall refer and which is still the law in force in Goa is clause 16 which reads: For all judicial and civil purposes, a group of gentile Hindus—gentile means non-Christians,—of either sex who dwell in the same house and live in the same domestic economy shall be deemed to be a family or a joint family. Section 17 goes on to say that the properties, rights and powers possessed by such a family and everything acquired by its members shall be under the control of the respective head of the family. There are exceptions; I shall not go into them, because the point I wish to submit is this. It is now seven years since the Income-tax Act, Gift Tax Act, etc. have been in force in these territories.

But the position about the assessment of the Hindu undivided families in Goa still remains in the melting pot, altogether uncertain. My amendment seeks merely to put in a definition of an inclusive character to the effect that the H.U.F. shall include any group of Hindus deemed to be Joint family under section 16 of the Decree to

[Shri N. Dandeker]

which I have referred. Assessments are pending from the assessment year 1963-64 onwards. To protect revenue from the time-bar against these assessments, if they had been made in the name of H.U.F., so called "protective" notices had been issued to re-open those assessments in the name of individuals; or if they had been assessed in the name of individuals, "protective notices" have been issued to re-open them in the name of families. And yet, to this day, nobody knows just exactly what is the position there about Hindu undivided families. The general law about the Hindu undivided families in so far as the taxation department is concerned is quite clear, namely, that there can be a Hindu undivided family of the Dayabhaga type or the Mitakshara type; and these prevail to the extent that the law relating to Hindu undivided families has not been modified by a statute. For instance, the Married woman's property Act or the Hindu Succession Act and various laws of that kind have modified the Hindu law even in India. Similarly, there exists in Goa and in operation today, this Decree of the erstwhile Portuguese Government dealing with certain aspects of the Hindu joint families in Goa. The general Hindu Law subject to this decree is still applicable; and it is because the people concerned including myself have been unable to get any answer that is definitive from the Central Board of Direct Taxes, it is because the assessments are pending or have been reopened in order to keep them pending and so as to get over the time limit, that this amendment has been brought by me. It does nothing more than to say that these types of families shall also be recognised in addition to the families who are already recognised.

hope in this way that an end will be put to the period of uncertainty. All kinds of assessments are pending and have been reopened and so on; and it is most desirable that this period of suspense should be ended. I hope, therefore, that the Minister would be good enough to accept the amendment which I have proposed.

SHRI BENI SHANKER SHARMA : Mr. Chairman, Sir, from what Mr. Shukla has just now stated, one may gather the impression that whatever has come out of the Select Committee was as a result of majority decision. I would humbly submit that it is not so. In fact, so far as this provision is concerned this is an example wherein we tried our best to put things a right, and the Select Committee was of one opinion on this issue, but unfortunately, we were pushed in such a corner that we could not do it. Rather, we came to a blind lane wherefrom we could not find any way out.

In this clause, agricultural income has been defined. Before this, I may remind you, that while introducing the Finance Bill, in 1970, by clause 3 of that Bill, section 2 (14) (iii) was amended, amending the definition of "agricultural land in India." Now, the difficulty before us was that we could not amend or make any change in the clauses which were not before us. Sir, This is a glaring example of what I had stated in my opening submissions that the Income-tax Act has been amended so often and so haphazardly that Commissions after Commissions, committees after committees and Judges after Judges, had pointed out that so far as the substantive provisions of the income-tax law are concerned, they should not be amended by any Finance Bill.

After the introduction of this Bill. Some time in 1969 the Finance Bill 1970 was introduced in February, 1970 and by clause 3 of that Bill, the definition of "agricultural land" was changed. Now, we had no other alternative but to fall in line with the definition while defining agricultural income in this Bill.

But Sir, so far as this Parliament is concerned, I would submit that as it is a sovereign body, it can, if it so likes, change the definition of "agricultural land" as will and in keeping with that, also change the definition of "agricultural income."

After all, what is tax incidence and what is the revenue effect of these changes ? These provisions have tried to bring in here.

Sir, this is a little complicated clause and I will explain it in just two minutes. The amendment which I have sought to make is this. It is to the proviso (A) at page 2.

Section 2 (1) (c) remains as it is but the proviso which is sought to be substituted by a new one is as follows "Provided that—

the building is on or in the immediate vicinity of the land and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land requires as a dwelling house or as a store-house or other out-building."

The only exemption allowed by this proviso, was for the use of the building which the cultivator or peasant may require as a store-house or dwelling house for the purpose of cultivation. I admit that there may have been some cases, when some unscrupulous people might have taken recourse to some evasion of tax. There may be a gentleman living in Delhi or Calcutta growing some vegatables—some cabbage or potatoes in the lawns of his Bungalow and claiming that his bungalow was meant to be used as a dwelling house for the purpose of cultivation. Such things should be prevented by all means, but for that purpose we should not take recourse to a provision which will affect adversely so many peasants and cultivators in the country.

Then, sub-clause (ii) (A) says :

"in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, corporation, notified area committee, town area committee, town committee or by any other name)....."

In this clause all the notified area committees, town area committee, etc. have been roped in. I come from a village *viz.* Banka where there is a notified area committee. It is a small sub-divisonal town in Bihar. In order to claim the benefits of a notified area committee, the population should be 15,000. But the population of my village Banka is hardly 6,000 or so. As such surrounding villages at a distance of 5 or 6 miles have been roped in. In between these villages and Banka there are stretches of agricultural lands which will be affected by this provision. As such this clause will act very adversely in the case of these peasants and cultivators.

Therefore, Sir, I have suggested that all these words within the brackets–*viz*, notified area committee, town area committee, town committee, etc.—should be taken out. So for as municipalities and corporations are concerned, I have no quarrel. But other things should be taken out. Sir, as I said, if we do it the revenue effect will be not very substantial. But if we retain it, it will add to the difficulties of the peasants and cultivators and also to the difficulties of the department, without any corresponding benefits to the revenue. Therefore, these words should be excluded.

Sir, if that is not possible, in the alternative, the populotion limit which is fixed at 10,000 should be increased to 50,000. That will take away from the ambit of this provision many small towns and villages where there are notified area committees and other committees.

SHRI N. K. SOMANI (Nagaur) : I would like to make a brief submission in respect of amendment No. 59, which has been covered comprehensively by Shri Dandekar. I think it is a lacuna due to some oversight that these territories of Goa, Daman and Diu have been left out, as far as the definition of 'joint family' is concerned. As an erstwhile Home Minister Shri Shukla should know that there is no particular reason why the laws or acts that prevail in other parts of the country should not prevail in the acquired territories unless there is a specific reason for that.

At the time of the Select Committee when we raised this question and moved this amendment we were over-ruled on the technical ground that it goes beyond the scope of the Bill. I submit that this is not so now, and the President has also been pleased to give us permission to move this particular amendment. In view of fact that government have not done what they could have done, in my opinion, by an executive order to extend the scope of the enactment to the families staying in this territory, since they have not chosen to do so, this is the proper time, because both the sides are being tackled by this Bill and there is no reason at all why at that

[Shri N. K. Somani]

time or now it is dismissed on purely technical grounds.

Another point I would like to assert is this, that a large number of cases are pending for further want of a clear directive, either at the Central Board level or a level above that. One such case has already been put before you. Because of this particular lacuna the cases are re-opened. Therefore, both on grounds of justice and equity, as well as on grounds of administrative efficiency and disposal, they should see that this particular amendment is accepted as a part of the Bill.

SHRI VIDYA CHARAN SHUKLA : These amendments moved by Shri Dandeker and Shri Somani, Amendment Nos. 58 and 59, propose to add a new definition to the expression of "Hindu undivided family" in the definition clause of the Act so as to include any group of Hindus or Joint Hindu family which are described in section 16 of the decree promulgated on 16-12-1880 by the erstwhile Portuguese authorities in Goa, Daman and Diu. I have no quarrel with the spirit of the amendment that has been moved by the Hon. Members. But our difficulty has been mentioned to Shri Somani. When we consulted the Law Ministry, who drafted this Bill, for advice they told us that this amendment is clearly outside the scope of this amending Bill and it cannot be included in this Bill. We have referred this matter again to the Law Ministry and we are trying to ascertain their views as to how we can improve upon the situation, because I concede this situation does require change. This situation should not continue as it is, but in what manner we can bring about a change, in what ways the change should be brought about, I would like to get the considered opinion of the Law Ministry before we issue this order. So. I would beg of the Hon. Members to be patient with me. Let us find out what exactly we can do so that we can tackle this matter in a proper way.

SHRI N. DANDEKER : How long is it going to take ?

SHRI VIDYA CHARAN SHUKLA : We will hurry it and as quickly as possible we will find out from the Law Ministry what exactly can be done in this matter ?

Amendment No. 87. moved by Shri Beni Shankar Sharma, seeks to amend the definition of "agricultural income". Under this Bill the income attributable to the farm building will be treated as agricultural income subject to the condition that the building is situated on or in the immediate vicinity of the land which is assessed to land revenue, or on local rates, or in the alternative it is situated on a land outside any municipality, whether known as municipality. municipal corporation, or notified area committee or town area committee.

In India all these local bodies are known by various names and, therefore. it has not been said by which name such limit will be prescribed. We want to bring the concept of urban areas in the definition of 'agricultural income' in line with the provision made through the Finance Act, 1970, and the Wealth-tax Act in the definition of "capital assests". Therefore this provision has been added here. If we accept Shri Sharma's amendment, the entire matter will be thrown open to confusion and we will not know how to define that particular area and how in relation to that area we should define that particular capital asset. Therefore I would be unable to accept that amendment,

SHRI BENI SHANKER SHARMA : What would be the tax effect of the provision ?

MR. CHAIRMAN : No crossquestioning please.

SHRI N. DANDEKER : In view of his assurance I will not press my amendments, Nos, 58 and 59.

MR. CHAIRMAN : Has the Hon. Member the leave of the House to withdraw his amendments, Nos. 58 and 59 ?

SOME HON. MEMBERS : Yes.

Amendments Nos. 58 and 59 were, by leave, withdrawn.

MR. CHAIRMAN : Now I am putting amendments Nos. 87 and 88 to the vote of the House.

Amendments Nos. 87 and 88 were put and negatived.

MR. CHAIRMAN : The question is :

"That clause 2 stand part of the Bill".

The motion was adopted

Clause 2 was added to the Bill

CLAUSE 3--(Amendment of Section 10 of Income-tax Act, 1961)

SHRI SHIVA CHANDRA JHA : I beg to move :

Page 4, line 35,—

for "four" *substitute* "two" (1)

Page 5, lines 11 and 12,—

after "farming" *insert* "poultry farming" (2)

SHRI KANWAR LAL GUPTA : I beg to move :

Page 4, line 35,—

for "four" *substitute* "one" (42)

Page 4,—

after line 42, *insert*—

"Provided that in case of technicians, other than the technician who has a special knowledge and experience in industrial or business management technique whose stay in India does not exceed sixty days in all commencing from the date of his arrival in India, condition (2) aforesaid shall not apply;" (43)

Page 5, lines 8 and 9,—

omit "constructional or manufacturing operations, or in" (97)

Page 5, lines 11 and 12,—

omit "agriculture, animal husbandry, dairy farming," (98)

SHRI N. DANDEKER : I beg to move :

Page 4, line 35,—

for "four thousand rupees" *substitute*—

"seven thousand five hundred rupees" (60)

Page 3,—

omit lines 27 to 33 (75)

Page 3, line 39, —

after "passage" *insert*—

"or any travel concession or assistance" (76)

Page 3, line 42,—

after "proceeding" *insert*—

"on leave to any place in India or" (77)

Page 3, line 46,—

after "India" *insert*—

"or to any place in India" (78)

Page 5, line 10,—

after "power" *insert*—

"or in the technology of electronics, telecommunications or computers" (79)

Page 5,—

after line 12, *insert* —

"(iii) scientific and industrial research and development," (80)

Page 5,—

after line 33, *insert*—

"(31) in the case of an assessee who carries on the business of coal mining in India, the amount of any subsidy received from or through the Coal Board under any such scheme concerning sand stowing operations or difficult mining conditions as the Central Government may, by notification in the Official Gazette, specify:

Provided that the assessee furnishes to the Income-tax Officer, along with his

[Shri N. Dandeker]

return of income for the assessment year concerned or within such further time as the Income-tax Officer may allow, a certificate from the Coal Board as to the amount of such subsidy paid to the assessee during the previous year.

Explanation.—In this clause "Coal Board" means the Coal Board established under section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952)". (81)

श्री शिव चंद्र झा : सभापति जी, मेरा संशोधन क्लाज 3 में है जहां पर कि टैकनिशियनों को यह छूट देने की बात है कि बाहर से जो यहां के टेकनिशियन वापस आएंगे उनको उनके यहां पहुंचने के बाद से 24 महीने तक की छूट तो है ही साथ ही 4 हजार रुपये महीने के हिसाब से जो उनकी आय होगी उस पर भी टैक्स नहीं लगेगा, तो इसी में मेरा यह संशोधन है कि 4 हजार रुपया बहुत ज्यादा है, इसकी जगह पर 2 हजार कर दिया जाय। इस विधेयक का ओरिजिनल रूप जो था उसमें 2 रजार ही था। कमेटी वालों ने मिलकर 4 हजार कर दिया। मैं चाहूँगा कि अपने ओरिजिनल रूप पर ही यह विधेयक आ जाय और दो हजार ही होना चाहिए। चार हजार ज्यादा हैं। आप जानते हैं कि इनकम की डिसपैरिटी को खत्म करने की बात हो रही है और मिनिमम और मैक्सिमम की बात भी चल रही है तो चाहे हिन्दुस्तानी टैक्निशियन हों जो बाहर से आते हो सर्विस खत्म करके या छुट्टी पर आते हों अपने परिवार के साथ, या विदेशी टैक्निशियन हों हमारा जैसा वातावरण है, वैसा वातावरण हम बना रहे हैं उसके मुताबिक हमें चलना चाहिए और उस के मुताबिक ही हमारे कानून को भी होना चाहिए। इसीलिए मेरा यह संशोधन है कि 4 हजार की जगह 2 हजार छूट होनी चाहिए।

दूसरा मेरा संशोधन है कि जहाँ यह डैफिनिशन देते हैं टेक्निशियन का उसमें यह कहते हैं :

> "'Technician' means a person having specialised knowledge and experience in—
>
> constructional or manufacturing operations, or in mining or in the generation of electricity or in other forms of power, or agriculture, animal husbandry, dairy farming, deep sea fishing or ship building,"

यहां मेरा एक छोटा-सा संशोधन है कि डेयरी फार्मिंग जहां आप देते हैं वहीं पोल्ट्री फार्मिंग भी देना चाहिए। डेयरी फार्मिंग के विशेषज्ञ को तो आप टैक्निशियन मानते हैं, लेकिन पोल्ट्री फार्मिंग के विशेषज्ञ को टेक्निशियन नहीं मानते हैं, पोल्ट्री फार्मिंग का विशेषज्ञ क्या टेक्निशियन नहीं होगा ? इसीलिए मेरा यह संशोधन है कि पोल्ट्री फार्मिंग यहां जोड़ दिया जाय।

श्री कंवर लाल गुप्त : सभापति जी, मेरे चार संशोधन हैं। मुझे दुःख है श्री शिवचन्द्र झा जी की बात सुन कर कि कितना कन्फ्यूजन है, उन्होंने समझा ही नहीं कि यह है क्या ? जहां तक शुक्लाजी की पार्टी और सिद्धांत का सवाल है वह यही है कि इनके समाजवाद में जो भारतीय हैं उनको एंकरेजमेंट मिलेगी और जो विदेशी होता है उनको एन्करेजमेंट नहीं मिलेगी। जैसा कि हमारी पार्टी का नारा इंडियनाइजेशन का तो है ही, लेकिन यह भी कभी-कभी उसको सपोर्ट कर देते हैं। मगर इस विधेयक में मुझे आश्चर्य हुआ, इसमें यह बात कही गई है कि जो विदेशी टैक्निशियन होंगे और जिनकी चार हजार तक तनख्वाह होगी उनको 24 महीने तक इनकम टैक्स से छूट दी जायगी और 24 महीने के बाद उनको टैक्स देना पड़ेगा। लेकिन 24 महीने तक यह छूट उनको होगी। अब इसके मुकाबिले में जो देशी टेक्निशियन

हैं और उतने ही कम्पीटेन्ट हैं क्या उनको भी आप छूट देंगे ? उनको छूट देने की बात नहीं है । उन पर आपका इनकम टैक्स पूरी तरह से लागू होता है । तो इनके साथ यह भेदभाव क्यो हैं ? मैं पूछना चाहता हूं क्या आपको गोरी चमड़ी से इतना प्यार है ? जब हमारे देश में 50 हजार इंजीनियर बेकार हैं और दिन पर दिन इनकी संख्या बढ़ रही हैं, इंजीनियरिंग कालेजों में सीटस कम होती जा रही हैं, इंजिनियरिंग कालेज बन्द होते जा रहे हैं, इसके बाद भी बजाय इसके कि हम उनको एन्करेज करें, हम उनको और और डिस्करेज कर रहे हैं । आप मुझसे सहमत होंगे और शायद शुक्लाजी भी सहमत हों कि इंडस्ट्री हमारे देश में काफी हद तक डेवलप कर गई है और हमारा टेकनिकल नो हाउ भी काफी मात्रा में आगे बढ़ा है । उसके बाद अगर आपको कहीं फारेन टेक्निशियन की जरूरत पड़ती है, मैं नहीं कहता कि पूरी तरह से नहीं है, लेकिन अगर कोई कम्पनी रखना चाहे तो उनको एग्जम्पशन नहीं होना चाहिए, चाहे चार हजार का लाए, 6 हजार का लाए या 10 हजार का लाए, हमारा कहना यह है कि जो एगजम्पशन आप ने दे रखी है यह नहीं होनी चाहिए । आप को यह सुनकर आश्चर्य होगा कि जितने फारेन टैक्निशियंस है उसमें 75 पर्सेंट पब्लिक सेक्टर में हैं । सरकार को इतना मोह है विदेशी टेक्निशियनों से कि यह देशी टेक्निशियन पसंद नहीं करती । अच्छा तो यह होता कि डा० खोराना जिनको कि पुरस्कार भी मिला है, उनके जैसे योग्य साइंटिस्ट अपने यहां रहते । लेकिन वह क्यों बाहर चले गए ? क्योंकि उनको ठीक पे यहां नहीं मिलती, तो मैं तो सरकार से मांग करूंगा कि ब्रेन ड्रेन को रोकने के लिए उन लोगों को ज्यादा एन्करेजमेंट दी जाए । इसलिए मैंने संशोधन दिया है कि 4 हजार की जगह 1 हजार होना चाहिए । मेरा मतलब है कि बिलकुल मूलत: ही मैं नहीं चाहता कि कोई एग्जम्पशन दी जाए, मेरी इच्छा यह है कि किसी तरह का भेदभाव नहीं होना चाहिए । और उनको बिल्कुल कोई कन्सेशन नहीं देना चाहिए । इसीलिए मैंने 1 हजार का संशोधन रखा हैं क्योंकि 1 हजार में कोई फारेन टैक्निशियन नहीं आएगा ।

दूसरा मेरा संशोधन यह है कि अगर किसी कारखाने में कोई ऐक्सीडेंट हो जाता है उसके लिए अगर कोई बाहर से टेक्निशियन बुलाना पड़े तो मैंने यह अपवाद किया है, उसकी तनख्वाह चाहे कितनी भी हो, वह बहुत जेनुइन और अर्जेन्ट नीड है, तो उसमें हम अपवाद कर सकते हैं ।

15.00 hrs.

मेरा तीसरा संशोधन यह है कि टैक्नीशियन्ज की जो परिभाषा दी गई है, उसमें कहा गया है कि कंस्ट्रक्शनल, मैन्यूफैक्चरिंग-ऑपरेशन्स, एग्रीकल्चर, एनीमल हस्बैंड्री, डेअर-फार्मिंग--ये सब चीजें टैक्नीशियन्स में आती हैं । अगर कोई डेअरी का एक्सपर्ट आयेगा, उसको भी बुलायेंगे, कोई फार्मिंग का आयेगा तो उसको भी बुलायेंगे एनीमल हस्बैंड्री का आयेगा, उसको भी बुलायेंगे । मेरा कहना यह है कि हिन्दुस्तान अब इन चीजों में काफी आगे बढ़ गया है, इनमें विदेशियों की जरूरत नहीं है, अगर कहीं जरूरत है भी, तो हिन्दुस्तानियों को बाहर भेजकर शिक्षा दिला दीजिये, अन्यथा इस प्रकार का एन्कजमेंट नही दिया जाना चाहिए ।

मैंने यही संशोधन दिया है कि कंस्ट्रक्शनल, मैन्यूफैक्चरिंग ऑपरेशन्स, एग्रीकल्चर, एनीमल हस्बैंडी, डैअरी-फार्मिंग -- ये चीजें इस में से हटा देनी चाहिये ताकि इन क्षेत्रों में केवल हिन्दुस्तानी ही काम करें। मैं समझता हूँ कि शुक्ला जी इस बात से इत्तिफाक करेंगे कि हिन्दुस्तान के लोगों को ही, जहां इतनी अनएम्पलायमेंट है, हमें ज्यादा से ज्यादा बढ़ावा देना चाहिए और यह एक्स्ट्रा कन्सेशन जो आपने उनको दिया है, यह नहीं होना चाहिये ।

SHRI N. DANDEKER : My amendments Sir, I would take in four groups. First of all, amendment No. 75 is concerned with the omission of a proviso relating to travel concessions, during leave and on retirement, to Indian personnel employed by assessees. The proviso that I said should be deleted is this :

> "Provided that the amount exempt under item (a) or item (b) of this subclause shall in no case exceed the value of the travel concession or assistance wich would have been received by or due to the individual in connection with his proceeding to his home-district in India, on leave or, as the case may be, after retirement from service or after the termination of his service."

The short point is this. These are some of the difficulties : On the one hand, the Government has to be congratulated on allowing travel concessions to the employees in this country. In these hard days some good employers give travel concession when you go on leave. They also give certain travel facilities when you retire. Those facilities will not now be regarded as your income and they will be exempt from your total income for taxation. But, Sir, instead of stopping there, in relation to a very sensible proposal, the Government go on chiselling it down and the chisel that is applied here is this. For instance if I am employed in Bombay, I may wish to go on leave to Kodaikanal but my home town may happen to be next-door at Ratnagiri. Although my employer is perfectly willing to pay my travel fare to Kodaikanal, I shall only get a miserable sum of Rs. 10 that would be the amount of fare from Bombay to Ratnagiri. That is the short-point.

Similarly, when I retire, if I am an employee of an Indian concern in Bombay and I wish to settle down in Bangalore, not in Ratnagiri, and my employer is good enough to say, "Look. It will be very nice. You are retiring. I will give you travel concessions and pay the full fares of your self and your family even if you want to settle in Bangalore". But under this Bill I will get only so much free of tax as will be required to take me from Bombay to Ratnagiri, may be, Rs. 100/— whereas I will have to spend Rs. 1000/— to go to Bangalore and I will have to pay income-tax on the difference. This, Sir, seems to me a very trivial thing from the Government's point of view as also from the employee's point of view,—namely the practice of thinking out of a good thing and then chiselling it down again to nonsensical dimensions. This is what I object to. I hope the Minister would be good enough to see the point and agree that that proviso which is the limiting factor ought to be deleted.

The next three amendments, Nos. 76, 77 and 78 are concerned with the grant of similar tax-free facilities to expatriate employees of concerns. Here, the situation is the reversed. If an expatriate wants to go on leave to England, Germeny or Timbuctoo or wherever he comes from and the employer is willing to pay his passage, etc., that will not be treated as part of his income. And quite properly so. But if, instead of going to England or America or wherever he comes from, he chooses to spend a month or two in Darjeeling or in Simla or in some place down-south, the Niligiris, he would not get this. He will be allowed,—if he spends Rs. 9,000 per head, for himself, his wife and his children —his return fares to London, and that will not be taxed as his income. But the moment he says, I would like to see India; I am due to retire in 5 or 6 years, "he will not be allowed. I am quoting an actual case which is within my knowledge He says, myself and my wife and children would like to go to Simla, in the next year; or two years later, to Nilgiris or Mahabaleswar or some other place in India. The employer says 'Fine, I will give the travel expenses of that to you.' But that will be added on to his income. But, if he says, I will go to England or France or New-York, wherever he comes from, that will be allowed as a concession !

The amendment that I have given notice of is to the effect that if he wishes to avail himself of his leave *in India* he should get that, too, free of Income-tax.

Conditions abroad, in America and England and other places, for retired

people are becoming really very difficult. The cost of living is very high; domestic help is difficult to be obtained, and the weather can be very rigorous. I happen to know of one example where a person is considering to settle in India, become an Indian citizen, pay all our taxes and so on and so forth. But while we shall concede all the passage for him, his wife and his children tax free if he wants to go on retirement to the foreign country, we do not allow that if he wants to settle in Wellingdon, near Coonoor, or at the foot of the Darjeeling Hills, or in Assam or in any part of India. Even these small amounts will be added on to his income,

These are the some of the ridiculous, nonsensical examples of chiselling down of a single good concession and I do suggest that the Hon. Minister should look at this and say without hesitation that he agrees with me.

Next, Sir, I am concerned with Amendments Nos. 60, 79 and 80. These are rsspectively concerned with Technicians, technology of electronics, telecommunications or computers and Scientific and industrial research and development.

I would like the fullest scope of developments in the field of technology to come to this country in the fields where they are urgently needed. I am suggesting that in the Clause which reads—"Constructional or manufacturing operations or in mining or in the generation of electricity or any other form of power" we may add: "or in the technology of electronics, telecommunications or computers."

In the second clause after "agriculture, animal husbandry, dairy farming, deep sea fishing or ship-building I want to add "(iii) scientific and industrial research and development." I would like to take a few minutes on this point. Electronics, telecommunications and computers are the things of the immediate future. We talk about the "Luna" going to the Moon, there are various developments of nuclear technology and all kinds of technological progress in these fields is going on in the world. That is why I wish to add the technology of electronics, telecommunications or computers. The field should not be so restricted as to exclude these very essential things.

And, as I said, I wish to add the words 'scientific and industrial research and development' after line 12, page 5. Various debates are going on today regarding research and development accusations are flung with considerable justification, that many Indian concerns do not devote enough money on scientific research and development. It is true. The reasons are twofold. One reason is, on the one hand a number of concerns cannot bear the cost the cost of technological research and development is colossal; but equally there is also the lack of personnel to give the necessary guidance and direction as to how to go about this business of scientific research and development. It is not just fiddling about with a testtube or with tubes and retorts and things like that. There has got to be a guiding hand, an experienced guiding hand that teaches people how to go about *organising* a research and development laboratory, organising research and development work, and giving guidance about what sort of problems to take up and what problems not to take up, and what particular problems of applied technology they should investigate and so on. It can take quite a long time merely to talk about these things. But this is one of the things that would in fact *reduce* the field in which we shall *in future* require technology, and, therefore, I have ventured to suggest that it be added.

I have said enough in my general speech that the field of technology for the import of tax-free technicians should be restricted; but having restricted the field, for heaven's sake, let us not get second raters as we shall most certainly get by saying that we shall pay them a tax free salary of only Rs. 4000, equal to £ 2600 per annum in England. The limit that I have suggested, namely Rs. 7500 would be £ 5000 per annum in England. The Hon. Minister has only to take up the advertisement page of *The Times* or the *Daily Telegraph* or any leading newspaper in England, and he will find that second-level people are being offered salaries of £ 6000 per annum. So either we mean business by this concession or we do not. It is no

use the Hon. Minister's saying that nothing prevents one from paying him more. I presume the object of this is to facilitate the bringing of technologists within the admitted fields of technology specified here. But again this chiselling Government says: if you want to pay him Rs. 7500, only Rs. 4000 will be tax-free as far as the Government is concerned and the remaining Rs. 3500 will be taxable, but the employer should pay the tax on it. The Minister said that it was only Rs. 500 p. m. or Rs. 500 per annum or something like that. If that is so, then what are we talking about ? Surely, we are talking about big things, technological development, scientific research and development and things of that kind. Or are we fiddling around with Rs. 4000, that is, £ 2600 per annum or £ 5000 or £ 6000 per annum ? Do we want competent men even within the restricted field of technology in which we are prepared to accept them ?

Finally, Sir, amendment No. 81. It contains a proposal to insert a new exemption clause at page 5. There is a new exemption that is being now introduced in the Income tax Act, in section 10, by new clause (30) which relates to expenditure under any scheme of replantation or replacement of tea bushes in tea-growing business and so on; and exactly parallel to that, is the problem in this country of coal-mining. In fact, a far more serious problem in this country is that of coal mines running down. The coal mines require to be modernised. There are difficult conditions of coal-mining, and difficult conditions of sand-stowing so that the mines do not collapse. My amendment No. 81 is exactly on parallel lines and it says:

> "In the case of an assessee who carries on the business of coal-mining in India, the amount of any subsidy received from or through the Coal Board under any such scheme concerning sand-stowing operations or difficult mining conditions as the Central Government may, by notification in the Official Gazette, specify...."

and then there is the proviso which says:

> "Provided that the assessee furnishes to the Income-tax Officer along with his return of income for the assessment year concerned or within such further time as the Income-tax Officer may allow, a certificate from the Coal Board....." etc.

It is exactly on the same lines as is now proposed in relation to the replantation and replacement of tea bushes. I hope the Hon. Minister will be pleased, having heard my explanation, at least at this stage, to accept these amendments.

SHRI N. K. SOMANI : I would like to begin with the income-tax-free ceiling of the technicians. My Hon. friend Shri Kanwar Lal Gupta said that this would run contrary to the interests of our own young technicians in this country. I must make it clear that I am not with him in this. I do not think that we should mix the two issue, one relating to the general level of unemployment of our own boys, technicians and engineers in this country and the other relating to the desirability of a small number of experienced and trained people coming from abroad. These are two distinct issues and have got to be settled and treated as such.

Shri N. Dandeker had given you figures about the salary level of ordinary technicians prevailing in England. Only yesterday I read a letter from an Indian resident in New York who says that all those Indians who are occupying good positions in the USA are getting an annual pay between 15,000 and 40,000 dollars. These are the salaries and perquisites that our Indian boys are now earning in the USA. If we are thinking of importing on a very restrictive and clearly defined basis, which is in the interests of our country's development, technicians, then the level of exemption of the salary of the technicians will have to be on a par with what is prevailing elsewhere,

Otherwise, as Shri Dandekar had pointed out, we would only be importing or allowed to import second-class or third-class technicians which will not be of any service at all. Government has already taken a positive step, in the past, there used to be a "free for all" for importing any Tom, Dick or Harry; there used to be no restriction at all. As Shri Gupta pointed out, Government itself by its con-

duct in the public sector has given this kind of shelter to foreign technicians by importing them into that sector indiscriminately. Not only that, they used to bring them times without end. Now that period is also reduced from 36 to 24 months.

I would like to inform the House that managers, technicians and engineers are getting obsolete today at the rate of, let us say, once every three years, unless they keep in touch with the latest theories and practices in the particular spheres of production or technology they specialise in. I include managers also in this. We are very much likely to be obsolete otherwise. Therefore, in the fields in which we have a vacuum and where we have absolute basic needs, we will have to be sensible and practical about this aspect.

As far the particular definition under the explanation paragraph, I for one stand for the view that Government has been too sweeping or general about it. We pointed to distribution of electricity and at our instance, this has now been taken out. This is the Government which is prepared in its definition to bring in technicians for generation of electricity, for which of course as far as the conventional method is concerned, this country has enough engineers. On the one hand, it is prepared to bring all these kinds of people that you will need only in very specialised fields; on the other, it would not see reason as far as the salary levels are concerned.

As for the employees' leave, either annual leave or leave on retirement, apart from the factors mentioned by Shri Dandekar as to why they should be allowed to go to any part of India for holiday or leave as approved by the employer, there will be administrative delay in the calculation of these things and the whole income tax department would be sitting and doing nothing else but calculating the railway fare and the coolie charges; if they were to go on home leave, what would be the amount, if they were to go another station, what would be the amount involved. They would be doing nothing else. If this principle is accepted and revenue considerations are not so as to upset the Finance Minister, I do not see any reason why he should ask his department to be loaded by these trivialities which are not likely to result in any substantial thing. Therefore, I would plead for a reconsideration of this, than there should be absolutely no limit as far as Indian citizens travelling to any part of India with their families after concurrence of the payment from their employers.

SHRI VIDYA CHARAN SHUKLA : I explained in my reply to the debate on the motion for consideration that whenever we give any limit, whether it is Rs. 4,000, Rs. 5,000 or Rs.2,000 or Rs.1,000, it is only as a matter of encouragement for getting foreign technical knowhow in matters where it is not indigenously available. I would draw Shri Gupta's attention particularly to this. It is not a question of desi technicians or desi engineers and so on. We always scrutinise every application for foreign technical know-now. Whenever any particular concern wants to get a foreign technician in India, we do not just allow it straightway; the administrative ministry in consultation with other bodies has to satisfy itself that such expertise is not available in the country. Only then people from outside are allowed to come in and this concession given. It is not a question of there being lakhs and lakhs of engineers here available to do work; even if there are only a few Indian engineers capable of doing that work and they have no job, just for the sake of white skin we do not got foreign experts here and give them jobs here.

It is never done like that. To the best of our ability we satisfy ourselves, and I think that the Indian manufacturers and Indian employers themselves also take precautions to find out whether such technical help is available here or not, and only if it is not available they ask for permission to get the foreign technical help in such matters and then we do give it. This point must be absolutely clear that it is not done as a matter of fancy for any particular thing and that it is not done when the technical knowhow is available in the country. It is done only when it is not available here.

[Shri Vidya Charan Shukla]

Shri Jha wants this limit to be reduced to Rs. 2,000. As I explained earlier, it is not a question of reducing or increasing. We have fixed a fair quantum which we think is midway between a very good exemption and a very bad exemption. This exemption has been given only as a token encouragement to get certain knowhow which is not available in the country and to develop our own knowhow by such importing. In two years time our own knowhow can be developed with the help such people who might be brought into the country. And this exemption will be given notwithstanding the salary paid to the foreign technicians. Sometimes, as Shri Dandeker pointed out, it may be that the technicians may have to be paid Rs. 8,000 or Rs. 10,000 or even 12,000 and on the rest of the salary there would be no such tax concession as provided in this clause, but the employers would be entitled by deduct the tax borne by them as a legitimate business expenditure on the amount that they pay as salary to the technician. So the ultimate tax burden on the company may not be as heavy as it is sought to be made out. And it is not as if we want that only the foreign technician who can be paid upto Rs. 4,000 can be brought into India. People who get paid even Rs. 12,000 or Rs. 14,000 can be brought in, but the extra amount will have to be borne as a legitimate business expenditure by the company which imports them here. Therefore, there is not much force as far as these amendments go.

I concede that there is some force in what Shri Dandeker says regarding the expenditure of these foreign technicians when they went to spend their holidays in India. If the foreign employees want to spend their time in India and for go their visits to their home country, then there is some force in what he says. If a foreigner who is serving in India does not wish to go to his home country and wants to spend that leave here, we shall definitely examine whether these concession can be given to him for meeting that expenditure here. Whatever we are able to do ultimately on this point—I am making no promise—we shall be able to do it only prospectively and not retrospectively.

As far as the expenditure for the Indian employee regarding the home town visit is concerned, this limit has been kept only to avoid the misuse of this provision. Sometimes the kind of difficulty which Shri Dandekar has pointed out may arise that where a person comes from Bombay or Ratnagiri and wants to spend his time in Kodaikanal or somewhere else, he will get a paltry sum and the rest will have to be borne either by him or by the employer. This is a thing which has been kept as a safe-guard and this is a new feature that has been introduced, and I am a little hesitant to accept any amendment on this at least for the time being.

Therefore, I request the Hon. Member not to press them.

MR. CHAIRMAN : I shall put amendments 1 and 2 of Shri Shiva Chandra Jha and Nos. 42, 43, 97 and 98 of Shri Kanwar Lal Gpta.

Amendments Nos. 1, 2, 42, 43, 97 and 98 were put and negatived.

MR. CHAIRMAN : Shall I put amendments 60, and 75 to 81 of Shri Dandeker to vote ?

SHRI N. DANDEKER : They do not all go in a group like that 60, 79 and 80 are one group and I press them.

MR. CHAIRMAN : I put these amendments to vote.

Amendments Nos. 60, 79 and 80 were put and negatived.

SHRI N. DANDEKER ; I am also pressing 75.

MR. CHAIRMAN : I put this amendment to vote.

Amendment No. 75 was put and negatived.

SHRI N. DANDEKER : I am not pressing 76, 77 and 78.

MR. CHAIRMAN : Has the Hon. Member leave of the House to withdraw them ?

Amendments Nos. 76 to 78 were, by leave, withdrawn.

SHRI N. DANDEKER : I am pressing 81.

MR. CHAIRMAN ; I put this amendment to vote.

Amendment No. 81 was put and negatived.

MR. CHAIRMAN : The question is :

"That clause 3 stand part of the Bill."

The motion was adopted

Clause 3 was added to the Bill.

Clause 4—(Amendment of section 23 of Income-tax Act, 1961)

MR. CHAIRMAN: We take up clause 4 of the Bill. Shri Shiva Chandra Jha may move amendments 3 to 9.

SHRI SHIVA CHANDR JHA : I move:

Page 5; line 46,—

for "six" *substitute* "five" (3)

Page 6, line 2,—

for "six" *substitute* "five" (4)

Page 6, line 3,—

for "six" *substitute* "five" (5)

Page 6, line 12,—

omit "two hundred" (6)

Page 6, line 14 and 15,—

omit "two hundred" (7)

Page 6, line 15,—

omit "two hundred" (8)

Page 6, line 31,—

omit "eight hundred" (9)

इस विधेयक के क्लाज 4 द्वारा इनकम टैक्स ऐक्ट में अमेंडमेंट किया जा रहा है, जिसमें लिखा हुआ है कि :

(a) in sub-section (1), for the second proviso, the following proviso shall be substituted, namely :—

"Provided further that the annual value as determined under this sub-section shall—

(a) in the case of building comprising one or more residential units, the erection of which is begun after the 1st day of April 1961 and completed before the 1st day of April, 1970 for a period of three years from the date of completion of the building, be reduced by a sum equal to the aggregate of—

(i) in respect of any residential unit whose annual value as so determined does not exceed six hundred rupees, the amount of such annual value;

एक यूनिट और दो यूनिट या इससे ज्यादा यूनिट्स के मकान कम्पनियां बनाएंगी । अब कहा गया है कि एक रैजीडेंशल विंग होगा और उसकी वैल्यू छः सौ रुपये तक होगी तो उसको छः सौ रुपये तक की छूट दी जायगी । छः सौ से ज्यादा वैल्यू होगी लेकिन बारह सौ से ज्यादा नहीं होगी तो छः सौ रुपये की छूट दी जायगी । अगर एक से ज्यादा रेजीडेंशल यूनिट्स होंगे और वैल्यू बारह सौ से ज्यादा होगी तो बारह सौ रुपये तक की छूट दी जाएगी ।

अब पहली बात तो यह है कि यह साफ नहीं किया गया है कि किस आधार पर और किस माप पर इन्होंने छः सौ रुपये एक रैजीडेंशल यूनिट के तय किए हैं । मोटे तौर पर एक यूनिट को बनाने का जो खर्चा पड़ता है वह ज्यादा पड़ता है । लेकिन जब कम्पनियां मकान बनायेंगी तो उसमे बहुत सा पैराफरनेलिया होगी और छः सौ से ज्यादा ही लगेंगे । अब छः सौ रुपये का जो एग्जैम्पशन दिया गया है वह किस आधार पर दिया गया है, यह साफ नहीं है । अब अगर दो विंग हैं और बारह सौ से अधिक वैल्यू है तो कहा गया है कि बारह सौ की छूट देंगे । अभी कहा गया

[Shri Shiva Chandra Jha]

हैं कि इस विधेयक के जरिये मोटे तौर पर कम्पनीवाद को बढ़ावा दिया जा रहा है ये लोग बड़े खुश हैं। अब छूट की बात भी इसमें आती है। अब मैंने संशोधन दिया है कि जहां पर छः सौ रुपये की छूट है वहां इसको पांच सौ कर दिया जाए, जहां पर बारह सौ की छूट है वहां दो सौ उड़ा कर एक हजार कर दिया आये। इसी आशय के मैंने संशोधन दिये हैं और मैं प्रार्थना करता हूं कि इनको स्वीकार कर लिया जाए। अगर मंत्री महोदय इनको स्वीकार नहीं कर सकते हैं तो उस माप को बताएं जिसको सामने रखकर इन्होंने छूट की यह लिमिट रखी है। अगर वह ऐसा नहीं करते हैं तो मेरे इन संशोधनों को वह मान लें।

SHRI VIDYA CHARAN SHUKLA : Sir, this exemption that has been pointed out is being done mainly to encourage the construction of houses for self-occupation and it will also encourage the construction of houses in the low-income sectors, If the quantum of this exemption is reduced, as Mr. Jha wants, then this salutary purpose which has been aimed at by this exemption which is being increased, will be defeated. Therefore, I would request Mr. Jha not to press his amendments.

MR. CHAIRMAN : I shall now put amendments Nos. 3 to 9 to the vote.

Amdndments Nos 3 to 9 were put and negatived.

MR. CHAIRMAN : The question is :

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 to 7 were then added to the Bill.

Clause 8—(Insertion of new sections 35 D, and 35 E in Income-tax Act, 1961).

MR. CHAIRMAN : The amendments may now be moved.

SHRI SHIV CHARAN JHA : I beg to move:—

Page 8, lines 28 and 29,—

for "one-tenth" *substitute* "one-twentieth" (10)

Page 11, line 22,—

for "one-tenth" *substitute* "one-twentieth" (11)

Page 12, line 5,—

for "one-tenth" *substitute* "one-twentieth" (12)

Page 12, line 6,—

for "one-tenth" *snbstitute* "one-twentieth" (13)

SHRI KANWAR LAL GUPTA : I beg to move :

Page 9, line 18,—

for "such" *substitute* "any" (44)

Page 9, line 20,—

omit "as may be prescribed" (45)

Page 9, lines 22 and 23,—

for "calculated at two and one-half per-cent."

snbstitute—

"calculated at the following rates:—

(1) upto a total value of rupees five lakhs—five per cent.

(2) over rupees five lakhs to rupees twenty-five lakhs—four per cent.

(3) over rupess twenty-five to rupees fifty lakhs—three per cent.

(4) over rupees fifty lakhs—two and a half per cent. (46)

Page 11; line 14,—

add at the end.

"(7) Where an assessee owning an industrial undertaking in India shifts such undertaking or any part thereof without

violating any law, from the place where it is situated to any other place in India at any time after the thirty-first day of March, 1969 and with intimation of such shifting to the Income-tax Officer, the assessee shall in accordance with and subject to the provisions of this section, be allowed for each of the ten successive previous years commencing from the previous year in which such shifting is completed, a deduction of a sum equal to one-tenth of the amount of the expenditure incurred in shifting the machinery and plant other effects of the undertaking or part thereof and transferring its establishment to such other place." (47)

SHRI LOBO PRABHU (Udipi) : I beg to move :—

Page 8,

after line 43, *insert*—

"(v) Administrative services;" (61)

Page 9, lines 2 and 3,—

for "for the time being approved in this behalf by the Board."

substitute—

"not disqualified as irrelevant and incompetent" (62)

Page 11, line 15,—

for "an Indian" *substitute* "a" (63)

SHRI N. DANDEKER : I beg to move :

Page 8 and 9,—

omit lines 44 to 46 and 1 to 3 respectively. (70)

Page 9,—

for lines 21 to 27, *substitute*—

"(3) Where the aggregate amount of the expenditure referred to in sub-section (2) exceeds the larger of the following amounts, namely—

(a) two lakhs rupees, or

(b) an amount calculated at five per cent—

(i) of the cost of the project, or

(ii) whether the assessee is an Indian Company at the option of the Company of the capital employed in the business of the Company," (71)

Page 11, line 15,—

for "an Indian Company" *substitute*—

"a domestic company," (72)

Page 11,—

after line 2, *insert*—

"*Explanation*— In this sub-section 'domestic company' shall have the same meaning as is Clause (b) of sub-section (6) of Section 2 of the Finance Act, 1970 (No. 19 of 1970)." (73)

Page 13,—

after line 13, *insert*—

("Amortisation of expenditure on shifting of industrial undertaking.")

35F. (1) Where any assessee owning an industrial undertaking in India shifts such undertaking or any part thereof from the place where it is situated to any other place within the same State in India, at any time after the 31st day of March, 1970, the assessee shall, in accordance with and subject to the provisions of this section, be allowed, for each of the five successive previous years commencing from the previous year in which such shifting is completed, a deduction of a sum equal to one-fifth of the amount of the expenditure incurred in shifting the machinery and plant and other effects of the undertaking or part thereof and transferring its establishment to such other place.

(2) Where an assessee to whom any deduction has been allowed under sub-section (1) for any year in relation to the shifting of an industrial undertaking, or part thereof, owned by him, sells or otherwise transfers such undertaking or part within a period of two years immediately following the previous year in which the shifting was completed,—

[Shri N. Dandeker]

(i) no deduction under sub-section (1) shall be allowed for the previous year in which such sale or transfer is effected or for any subsequent year; and

(ii) the amount or the aggregate of the amounts allowed as deduction under sub-section (1) shall be chargeable to income-tax as the income of the assessee of the previous year in which such sale or transfer is effected :

Provided that—

(a) this sub-section shall not apply in a case referred to in sub-section (3);

(b) the provisions of clause (ii) shall not apply where such undertaking or part thereof is sold or otherwise transferred to the Government, a local authority, a corporation established by a Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956.

(3) Where the undertaking of a company which is entitled to the deduction under sub-section (1) is transferred, before the expiry of a period of two years immediately following the previous year in which the shifting was completed, to an Indian company in a scheme of amalgamation,—

(i) no deduction shall be admissible under sub-section (1) in the case of the amalgamating company for the previous year in which the amalgamation takes place;

(ii) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the amalgamation had not taken place.

(4) Where a deduction under this section is claimed and allowed for any assessment year in respect of expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year." (74)

Page 9,—

after line 6, *insert*—

"(bb) lump sum payments, whether in cash or otherwise for technical know-how;

(bbb) pre-operational expenditure, that is to say, administrative and management expenditure incurred before the commencement of business operations other than expenditure directly attributable to the construction and erection of buildings, plant, machinery and equipment;" (82)

Page 9, line 12,—

after "fees" *insert*—

"including stamp duty" (83)

Page 9, line 16,—

for "and charges for drafting" *substitute*—

"auditors fees and legal and other charges for preparing, auditing, drafting," (84)

Page 9,—

after line 17, *insert*—

"(v) in connection with amalgamation or merger of two or more companies;" (85)

Page 10, line 34,—

for "seven years" *substitute*—

"five years" (86)

SHRI BENI SHANKER SHARMA : I bag to move :—

Page 8, lines 21 and 22,—

omit "specified in sub-section (2)" (89)

Page 8,—

line 26, *add* at the end—

"which is not allowable as a deduction as a revenue expenditure or otherwise under any other provision of the Act." (90)

Pages 8 and 9,—

omit lines 34 to 46 and 1 to 20, respectively. (91)

SHRI N. K. P. SALVE : I beg to move :—

Page 9,—

after line 6, *insert*—

"(bb) payment for technical know-how;" (116)

Page 9,—

after line, 17, *insert*—

"(v) prior to incorporation of a company not covered in items (i) to (iv) above;

(vi) on amalgamation or merger of the company;" (117)

SHRI S. KOTHARI : Sir, there are also my amendments: 99 to 105.

MR. CHAIRMAN : They are the same as those standing in the name of some others. For instance, 99 is the same as 90; 100 is the same as 91; 101 is the same as 71, and so on. Amendments to that effect have already been moved by others. But you can speak on the amendments.

श्री शिवचन्द्र झा : आठ नम्बर की क्लाज में मेरे दस से तेरह तक संशोधन हैं। अभी मैंने कम्पनी वाद की बात उठाई तो कुछ लोग घबरा गये। जो छूट दी जा रही है उससे यह बात साफ हो जाती है कि कम्पनी-वाद को बढ़ावा दिया जा रहा है। इसमें एमोर्टाइजेशन की बात आई है। यह नई चीज की गई है। यह साफ नहीं किया गया है कि यह नई चीज क्यों जोड़ी जा रही है। इंडियन कम्पनी है या परसन है।

"Where an assessee, being an Indian company or a person (other than a company) who is resident in India, incurs after the 31st day of March, 1970 any expenditure.....the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of an amount equal to one-tenth of such expenditure for each of the ten successive previous years....."

जितना खर्चा कम्पनी को स्टार्ट करने में शुरू-शुरू में होता है या होता था या बिजिनैस चलाने में शुरू-शुरू में होता है उसके बारे में कहा गया है कि पिछले दस साल का हिसाब लगाया जायगा। यह दस साल की बात आपने किस वजह से रखी है, यह आप हमें बताएं। इतनी छूट की क्या जरूरत है। मैंने अपने संशोधन में कहा है कि जहां आपने वन टेंथ लिखा है; उसकी जगह पर आप वन ट्वैंटियथ कर दें। आप परेशान हैं कि इंडस्ट्रियल डिवेलेपमेंट देश में बढ़ नहीं रहा है और उसको बढ़ाने के लिए आपने एमोर्टाइजेशन का रास्ता निकाला है। आप कपनियों को छूट देकर इसको बढ़ाना चाहते हैं। यह बढ़ा नहीं है यह आपने जो खराबियां की हैं, उसकी वजह है। मैं भी चाहता हूं कि छोटे यूनिट्स को, एंटरप्रन्योज को आप मौका दें, उनको आप बढ़ावा दें। लेकिन इसका मतलब यह नहीं है कि ऐसा करके बड़े-बड़े लोगों को और कम्पनियों को भी आप छूट दें। इसीलिए मैं समझता हूं कि यदि आप कम्पनियों को छूट देना चाहते हैं, एंटरप्रन्योर्ज को छूट देना चाहते हैं तो बेशक आप जो दस साल का हिसाब लगाते हैं, उसको लगाएं लेकिन वन टैंथ की जगह पर मैं चाहता हूं कि आप वन ट्वैंटियथ अवश्य कर दें। तभी कोई यह चीज ज्यादा मतलब वाली होगी।

श्री कंवर लाल गुप्त : मेरे चार संशोधन 44, 45, 46 और 47 नम्बर के हैं। जहां तक इस क्लाज का सम्बन्ध है, मूलत: यह एक अच्छी चीज है। जो नई क्लाज इनकम टैक्स एक्ट में जोड़ी गई हैं, उसका मैं स्वागत करता हूं। इससे प्रोडक्शन को बढ़ावा मिलेगा। वास्तव में यह ज्यादती पहले से चली आ रही थी। कुछ खर्चे ऐसे होते हैं जो हर साल की आमदनी में से निकल आते हैं। बाकी जो खर्चा है उस पर टैक्स लगता है। कुछ खर्चों को कैपिटल एक्सपैंडीचर मे गिन कर उन पर डिप्रिसिएशन मिल जाता है और कुछ सालों मे वे खर्चे भी आमदनी में से निकल आते हैं। जब आदमी कम्पनी या फैक्ट्री स्टार्ट करता है और शुरू-शुरू में जो उसका खर्च होता था वह अभी तक आमदनी में से नहीं निकाला जाता था और न ही उस पर डिप्रिसिएशन दिया जाता था। यह पहला मौका है जब सरकार ने यह चीज रखी है। इसीलिए मैं इसका स्वागत करता हूं।

मैंने इसमें केवल चार संशोधन दिए हैं। डी में लिखा गया है :

> "(d) such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provision of this Act) as may be prescribed."

मैंने अपने एमेंडमेंट में कहा है कि "एज मे प्रैसक्राइब्ड" को हटा दिया जाये। कम्पनी ने जो कोई भी खर्च किया हो, जो कोई भी इनिशल एक्सपैंडीचर किया हो, जिसका डीडक्शन उसको किसी दूसरी जगह नहीं मिला है, उसका डीडक्शन दिया जाना चाहिए। जब सरकार ने एक सिद्धात मान लिया है, तो यह अच्छा नहीं है कि उसको इस तरह हाफ हार्टिडवे में लागू किया जाये— कहीं लागू किया जाये और कहां लागू न किया जाये। अगर कम्पनी ने कोई जेनविन खर्च किया है, तो उसका डिडक्शन मिलना चाहिए।

इस इलाज में कहा गया है कि अगर ऐसा खर्च ढाई परसेन्ट से ज्यादा होगा, तो डीडक्ट करने में ज्यादा एमाउन्ट को इग्नोर किया जायेगा। कोई इंडस्ट्री बीस का पच्चीस हजार रुपया लगाती है, कोई पांच लाख रुपया लगाती है और कई करोड़ों रुपयों की बड़ी इंडस्ट्रीज हैं। इस क्लाज में कहा गया है कि उन सबके मामले में ढाई परसेन्ट से ज्यादा को इग्नोर किया जायेगा। कुछ एक्सपेंडीचर ऐसे हैं, जो छोटी इंडस्ट्रीज पर भी करने पड़ते हैं और बड़ी इन्डस्ट्रीज पर भी। ऐसी व्यवस्था में जिन छोटी इन्डस्ट्रीज का कैपिटल थोड़ा है, उनको भी केवल ढाई परसेन्ट पर डीडक्शन देना उनके साथ ज्यादती होगी। अगर सरकार छोटी इन्डस्ट्रीज को बढ़ावा देना चाहती है, तो उनको कुछ कनसेशन देना होगा। मैंने यह संशोधन रखा है कि पांच लाख रुपये तक २ परसेन्ट, पांच लाख से पच्चीस लाख रुपये तक 4 परसेन्ट, पच्चीस लाख से 50 लाख रुपये तक 3 परसेन्ट और पचास लाख रुपये से ऊपर ढाई परसेन्ट पर डीडक्शन दी जाये। मेरा निवेदन है कि जिन छोटी इन्डस्ट्रीज पर पच्चीस हजार या पचास हजार रुपया लगा है, उनको केवल ढ़ाई परसेन्ट पर डीडक्शन देना उनके साथ ज्यादती होगी।

अपने सशोधन सख्या 47 के द्वारा मैं जो प्राविजन इस क्लाज में रखना चाहता हूं, यह ओरिजिनल बिल में भी था, लकिन उसको पोलिटिकल रीजन्ज से हटा दिया गया है। अगर कोई ऐसीसी अपनी इडस्ट्री को हिन्दुस्तान के एक हिस्से से दूसरे हिस्से म ले जाता था, तो उसको उस खर्च पर डीडक्शन मिलता था। लेकिन सरकार ने उस प्राविजन को बिलकुल हटा दिया है—किसी रेवेन्यू कनसिडरेशन या इन्डस्ट्रियल प्राडक्शन ने कनसिडरेशन से नहीं, बल्कि पोलिटिकल कनसिडरेशन या पोलीटिकल प्रैशर की वजह से। अगर कोई आदमी अपनी इन्डस्ट्री को किसी दूसरी जगह ले जाता है, तो वह शौक से, एज ए मैटर आफ

फन, ऐसा नहीं करता है । हो सकता है कि उसको वहां रा मैटीरियल न मिलता हो, या उसको कोई और दिक्कत हो, या दूसरी जगह उसको ज्यादा लाभ हो । मेरा संशोधन यह है कि इस पर किये जाने वाले खर्च पर उसको डीडक्शन मिलना चाहिए । अगर वह कानून के विरुद्ध अपनी इंडस्ट्री को दूसरी जगह ले जाता है, तो उसको डीडक्शन न दिया जाये, लेकिन अगर वह कानून के अनुसार एक स्टेट से दूसरी स्टेट, या एक स्टेट में ही एक जगह से दूसरी जगह, अपनी इन्डस्ट्रीज को ले जाता हैं, तो उसको पहले की तरह डीडक्शन मिलना चाहिए ।

SHRI LOBO PRABHU : I may make it quite clear that I am not a big income-tax payer, nor do I hold a single share in any company. Still, I am speaking in favour of the company because I regard the company or corporate organisation as really a co-operative organisation. I would like to stress this point to those who talk of companies as collection of rich men. At least 60 per cent of the shares in the compnies are help by small people. Then LIC and Unit Trust hold another 20 per cent. So, if we have a clear conception that company is not the collection of very rich men but it is a co-operative organisation, the hostility to many of these provisions would vanish.

This particular clause relates to amortisation on which there has been a lot of bitter comment by our good socialist friend. I am not concerned with the actual rate. I am concerned with the question whether you should not include in this list of four items under clause (2) another item, namely, "administrative services". You have the feasibility report or a project report, a market survey and engineering services but you still have not considered the administrative services which go with a big project. They are not included in the project report. I would, therefore, suggest to the Minister to make up this little deficiency and include the administrative services also as one of the items.

The next amendment concerns about concerns, which are to qualify for this amortisation, which are to be employed. The provision here is that they should be approved in this behalf by the Board. It is rather a tedious process, where there may be 2,000 or 3,000 or more concerns, that the company should go first and get the approval of the Board. Why not follow the ordinary procedure of income-tax that where a genuine firm is employed it should be allowed and where it is an incompetent, irrelevant or a fraudulent firm it can be disallowed ? It is part of the ordinary procedure for income-tax that you disallow fraudulent or unnecessary expenditure. My amendment simply says, "concern not disqualified as irrelevant or incompetent". I think, it is a very simple amendment. It clarifies the position and helps to reduce the legwork and other work which will be involved if every time a company has to get the approval of the Board.

The last is a very important amendment in my view. In this country we have been doing extremely badly in mining, particularly mining of non-ferrous metals. You want zinc, lead, copper etc., for which you have to pay so much. I think, the total import bill every year adds up to about Rs. 200 crores. You have to encourage not only our own people but foreigners also to come in. I think, the Minister can contradict me but there has not been one single foreign company in this field of non-ferrous metals. I am told, there is one Indian Copper Corporation; but it is an amalgameted company as far as may information goes. I am only proposing this—and this is also consistent with the structure of this clause—that you omit the word "Indian" and just say "a company" and "a firm". If a company can be non-Indian or any kind of national, why not a company be allowed, even if it is a foreign company ?

I may add that this is not going to make a very big breach in our principle of Indianisation because we want foreign capital. Whether it comes as aid or as loan, it is better that it comes as a concern which has an interest in the country.

I do hope, the Minister will not regard himself as quite imprevious. We

[Shri Lobo Prabhu]

are here to propose these amendments not in the spirit of making light of his work but to improve on that and to make it more consistent and more suitable to the interests of the country.

SHRI N. DANDEKER : I think, I must point out that this particular clause 8 covered 5½ printed pages unlike the other clauses which are often one quarter of a page. Consequently it is going to take a considerable amount of time if I am to do at least some justice to these amendments.

First of all, I will deal with my amendment No. 70, which is concerned with deleting the proviso which requires that the various technical reports must be undertaken either by the assessee himself—which is perfectly fair,—or by a concern which is for the time being approved in this behalf by the Board. I did make quite a point about this in my general speech on the motion for consideration of the Bill, but I would like to reiterate that this sort of thing is really making this country a laughing stock. When an application for approval is made, this is yet another thing which will go around like the proverbial round robin along the ministeries. When someone wants to undertake a market survey and says, "Could such-and-such firm please undertake it for me ?", and applies to the Central Board of Revenue, it will become the round robin. There will be committees, rulings, noting, inquiries and so on and nothing will come out of this grinding mill for six months to a year. That adds to the reasons that I gave for objecting to this.

I am glad, the Minister clarified that t is not the Central Board of Revenue which is going to decide. It is going to go from Phillip drunk to Phillip sober. It has to go round the secretariat where all sorts of things are going to be decided about technical competence of a particular person, to do a particular job, and not the person who will be paying him—he is of no consequence at all—and it is all the other persons who are going to decide about technical competence. I will not be prepared altogether reject to this if the Central Board of Direct Taxes alone was going to do that. They have, at any rate, assessment records. If a consultancy firm were such that it was not even an assessee in the books of the Department, I could understand the Central Board of Direct Taxes raising its eye-brows saying, "Who is this person who is going to do market research ?" But if this red robin procedure is going to come, it adds to the objections that I have. It is really an impossible provision.

Then, Amendments No. 82, 83, 84 and 85 ralate to adding certain specific items of preliminary expenditure for amortisation to the list already contained in the Bill. The reason why I am adding there is that although I am aware there is a kind of residual provision, that is, such other items of expenditure not being expenditure eligible for any allowance or deduction under any provision as may be prescribed, nevertheless knowing the disposition of the Central Board of Direct Taxes to chisel down anything that is good and to expand everything that is bad I would like to put; in some of the things as specific items. Therefore, I have suggested in so far as all assesses are concerned, lump sum payments, whether in cash or otherwise for technical know-how; preoperational expenditure, that is to say, administrative and management expenpiture incurred before the commencement of business operations other than expenditure directly attributable to construction and erection of buildings, plant machinery and equipment because that will rank for depreciation, and further I have suggested, fees, including stamp duty; auditors fees and legal and other charges for preparing, auditing, drafting; and also expenditure in connection with amalgamation or merger of two or more companies.

Here again, Sir, is an example of good intentions ruined by an aweful fear complex. They are aftraid of their own shadow. Instead of saying, that they would like to be as reasonable as they can and that if assessees are going to take a mean advantage or going to exploit on advantage and so on, they will chisel it down then, they begin by saying, "We will chisel it down. We will see how dare you get any concession."

Amendment Nos. 71 and 86 will be dealt with by my Hon.friend, Shri Somani. They are concerned with the question of limit on amortisation of expenditure. I will deal with Amendment Nos. 72 and 73 which relate to the definition of "domestic company". I find that expression "domestic company" is not only in the Finance Act for the purpose of not discriminating between Indian companies and those foreign companies which conform to certain conditions but I also find that in relation to a whole series of concessions contained in chapter VI—A of the Income-tax Act, there is a definition of "domestic company" in Section 80-B of the Act. It is the same definition as the one to which I have referred in the Finance Act. The defininition is there. It is no use for the Minister to say that that is not intended. The intention really of having the concept of a "domestic company" is this, that so long as foreign companies will conform to the prescribed rules and regulations, they shall not be discriminated against either in regard to rates of taxation in the Finance Act or in regard to numerous concessions that are contained in Chapter VI—A. In Section 80B, there is a definition of "domestic company" which is as follows :

> "domestic company means an Indian company or any other company which in respect of its income liable to tax under this Act has made the prescribed arrangements for the declaration and payment within India, of the dividends (including dividends on preference shares) payable out of such income;"

What I am suggesting is therefore not new. What I am suggesting is this, that wherever for the encouragement and development of growth of particular types of industries, a series of tax concessions, tax rebates, reductions from gross total income etc., are given, these are being given today both to Indian companies and domestic foreign companies; and my suggestion is very very strongly to urge that this particular concession ought also to be given to them. Mr. Lobo Prabhu pointed out that in so far as prospecting, proving and exploiting of non-ferrous metals was concerned, the effort in this country is puerile. There is, I know, now a Government concern which too is not producing good results. What one ought to be able to find is that people willing to take the risk and yet conforming to Indian requirements about taxation should be allowed to come from anywhere. It does not matter that they are foreign because their taxation position is exactly the same as in the case of Indian companies.

Sir, I come now to the final and in some respects, to a very important matter which the Minister dismissed with just one argument. My amendment No. 74 is concerned with the restoration of the provision regarding amortisation of expenditure on shifting industrial undertakings. First, I will not trouble the House by pleading *in extenso* the economic justification for this. It has been applicably put at page 23 of Mr. Bhoothalingam's report and it was precisely in pursuance of the Government's determination to implement all the recommendations that were acceptable to them that they themselves, in the Bill before the Select Committee, had included a provision which would insert a new section 35 E (Now I am calling it 35-F) and I will read the government's own justification for it. I am astonished when the Minister says that there is no justification. Here I have got the brief which was presented to the Members of of the Select Committee by the Government themselves in justification of amortisation of this particular expenditure which I am now seeking, namely, expenditure in the movement of industrial units from one place to another. This, Sir, is the justification :

> "The proposed new section 35-E seeks to make a provision for amortisation, against profits, of expenditure incurred by any assessee on the shifting of an industrial undertaking situated in India from the existing location to any other place in India. The expenditure qualifying for amortisation will be that which is incurred in shifting the machinery and plant..." and so on.

> "It is also proposed to provide for the denial of the benefit of amortisation in a case where the assessee sells or otherwise transfers an industrial under taking..."

[Shri N. Dandeker]

> It is further proposed to provide that where the industrial undertaking of a company entitled to amortisation of its expenditure on shifting is transferred to an Indian company in a scheme of amalgamation..."

the amalgamating company will not get and the amalgamated company will get the amortisation allowance.

I know of no better justification than that which has been put here. This was, as I said, the final brief given to the Members of the Select Committee for reference. There is only one reason and I know of no other reason and the only reason why the Select Committee said that they would drop this proposal—I will read out as to why this provision has been dropped—is this :—

"The Committee have decided that the provisions in respect of this should be omitted from the Bill....."

Now, Sir, the reason is this :

> " ..as it is felt that shifting of factories from one State to another with a view to avoiding the application of the local laws should not be encouraged through the grant of a tax concession."

This is a proposition with which I, Sir, entitely agree. I don't think this sort of concession should be available to people who move an industrial unit from one State to another, say, from out of Bengal or out of Kerala or from out of Ahmedabad into Rajasthan or some such thing. That would be wrong; no tax concession of any kind either by the receiving State or by the giving-out State or by the Central Governmet ought to be admissible. But it required the simplest of amendments, and I have incorporated that here, to get rid of that one defective feature.

16.00 hrs.

In respect of change of 'location' I have provided in my amendment 'from the place where it is situated to any 'other place within the same State in India'. I say : Where an assessee owning an industrial undertaking in india shifts such undertaking or any part thereof from the place where it is situated to any other place..." The original clause read "any other place in India". My suggestion is to make it read "any other place within the same State in India."

Every State is interested today in giving incentives to industrial units not to be concentrated in certain areas, to move out to backward areas, to less-cocentrated areas etc. and to areas were there ought to be greater development. I know what is happening in Orissa; I know what is happening in Maharashtra; I know what is happining in Gujrat and Mysore. Every State Government is anxious, and rightly anxious, that no new industrial units should be allowed to concentrate in industrial conglomeration areas; and that existing industrial units should be encouraged to move out from out of Bombay, from out of Bangalore, from out of Ahmedabad and so on, to other regions. They give various tax concessions, cheap water, power etc. and every facility and encouragement for them to move out from congested to non-congested areas and from congested to undeveloped areas and so on. In the Select Committee I said, this is going to be the largest single factor in helping that process. And we could remove that particular objection by the insertion of the words that I have indicated.

Secondly, Sir, I wish to substtiute the world "31st March, 1970" to "31st March 1969". I will not go into any smaller details.

The basic suggestion that I make is so much in conformity with Mr. Bhoothalingam's proposal, so much advocated by this Govenment's own brief handed to the Select Committee, so much welcomed by the varions States concerned, and so much necessary now, that I do hope the Hon. Minister will agree to it and to incorporate that in the amending Bill.

SHRI N. K. SOMANI : I wish to dea with 35D, Amortisation of certain preliminary expenses. This is with reference to last 3 lines on page 8, which seeks to give power to the Central Board of Direct taxes

or a body created for this specific purpose of providing recognition to chartered accountants, or professional people or market surveyors or technicians etc., who, in the eyes of that particular body, are competent to this kind of professional or technical service. My basic objection to this kind of approach is that no single body in India, least of all, any body attached to the Ministry of Finance or the Central Board of Direct Taxes, is equipped to go into the merits or demerits of a particular partnership firm or a consulting agency and find out whether they are competant or not. In addition to the fears that have been expressed by Shri N. Dandeker in respect of red-tapism, I suspect that another branch of favoured babi s in respect of architects or chartered accountants or market suraveyors will branch off from this body which will give it patronage.

Secondly, what is going to happen to our young people who come out fresh from the universities, from abroad and from here, who have gone into a partnership (firm for the) first time and who would like to do this kind of professional work, but who have not come within the patronage of the Central Government or its constituted authority who know nothing about these people ? After all, every general and professional firm in India is neither M N Dastur & Co. or for that matter, Shri N. K. P Salve's firm, that kind of eminence is not easily achieved. But then we would like more and more young people to come up to stature, and if an employer is willing to give them a chance and take them and give them this challenging assignment, I see no reason to equip this Government or any department of it with the authority to be able to say that a particular firm is more superior than another or better equipped to be able to do a certain job. This is the chierti responsibility.

Coming to the question of amortisation, once again a lot of misgivings on an absolutely wrong basis have been expressed in this House by some Hon. Members as if it is some concession which has been given for the first time in the world, and especially as if something unjustified has happened and it is being given as a gift to the Indian corporate sector.

Shri Bhoothalingam has made it abundantly clear that this was a particular injustice which was sought to be undone far a long time, and he has been very clear at page 23 of his report that all legitimate expenses in the matter of installing a particular unit should be allowed as capital expenditure and the balance should be for revenue, but, so far, this particular item was not being allowed, which nobody was claiming as if it were an illegitimate or a bastard child or as something hanging in the air. this particular item was not allowed so far. Therefore, in this behalf, a very sensible and a very good point has been conceded by the Government. But I would not call it any concession at all.

Now, let us look at it, as far as the ceiling of this expenditure at a paltry 2½ per cent is concerned. Here again, they think that they show generosity, but at the same time they deny a lot of other avenues of this kind by limiting this expenditure to just 2½ per cent. Unfortunately, a great deal of wrong information is prevailing in India that several emplyoers or companies go into all kinds of unnecessary expenditure when a new company is given shape to. After all, this is the only area and this is the only period in which each company, whether it is limited company or private limited or even a partnership firm is, in a very good sense of the term, in short supply capital funds, and it would like to complete its performance andr try to see that every rupee streches the farthest possible. It is only during the period when some company is making fabulous profits that it is likely to indulge in a little bit of laxity as far as expenditure is concerned. But in this initial nebulous period which is preoprative and therfore, in which no question of profits arises, I cannot see how any particular company will go out of its way squander way for unnecessary expenditure.

I am not quoting either the employers or the Government in this regard, but I would like to quote the statistics given by the Institute of Chartered Accountants of India, based on a factual survey made by a publication of the Government's own department. It shows that during the period 1966-67, the average cost of raising capital which now is sought to be put a ceilling of 2½ per cent on, in the case of companies

[Shri N.K. Somani]

issuing shares. has been 6.4 per cent in the case of existing companies which have been issuing shares, the cost has been 5.7 per cent, and in the case of existing companies which have been issuing debentures, it has been 5.3 per cent. In the issue dated 1st August, 1968 of this publication *Company News and Notes* which has been issued by the director, Department of Company Affairs, Ministry of Indrustrial Development, these same figures are given for the year 1967-68 as 5.8 per cent, 6.2 per cent and 4.9 per cent. These are data based on actual statistics compiled by their own department. which shows that even in this matter of raising capital, the cost has beeen such, and when yon add all this expenditure that is proposed to be allowed within the definition and scope of the proposed new clause 35D, it will be seen that this 2½ per cent is absolutely inadequate, and, therefore, what we find is that while Government want to grant, and very rightly so after such a long period of time, something with one hand, they by the stroke of the other hand wish to withdraw it or deny it.

Then if at all a ceiling is proposed to be levied, we have said that it should be as suggested in our amendment No. 71. Again as pointed out by the earlier speaker by this particular ceiling two kinds of injustice will be done. One is that small scale and middle scale industries—this was a point repeatedly made in committee will be directly hit. May be some grant companies with a capital of Rs. 50 crores may find it all right, but when you think of smaller companies, the kind of areas in which you want new entrepreneurs to come up and new activities to be generated, these are the people against whom this 2½ per cent will very much go.

The second objection would be that by this ceiling which you calculate based on capital you put a premium on inefficiency. It will discriminate against those companies which finance expansion out of their own reserve as well as against those who make more economic and efficient use of their capital and borrowings because of the scope of the definition.

Lastly in line 34 on page 10 a period of not less toan 7 years is provided under the definition of long term borrowings' in case of deferred payment. Normally deferred payments used to be, and may still in a large number of cases, upto 7 years. But there are many cases where companies and managements are in a position to obtain loans on deferred payment for a period of 5 years and not 7. Those would be the people who are now tuying to be more efficient, who have taken upon themselves the responsibility of repayment these borrowing in a shorter period of 5 years instead of 7. They are going to be denied the benefit of amortisation under the definition. These are the areas which injustice is going to be generated.

To sum up, the anomalies that have been pointed out are these : first, in respect of allowing a ceiling at 2 per eent; secondly, from the point of small scale industry, they would be directly hit; thirdly, this is going to be against the efficient companies who by means of better utilisation of their own capital or by securing loans on a deferred payment basis for a period of 5 years want to show a better performance. On these grounds, I plead for a reconsideration on the lines of the amendment suggested by us.

SHRI BENI SHANKAR SHARMA : In the Select Committee we congratulated the Government for introducing this new section. I again take this opportunity of thanking the Ministry for this innovation. But as usual, the Government whenever it does a good thing it does half-heartedly and hesitatingly. I have no quarrel with the Ministry on the question of allowance of 2½ per cent for the time being or a little more or less. Sir, the cumulative effect of the three amendments we have put in is this : I do not want that our ITOs should always be spoon-fed and kept on Horlicks for their life. My friends have suggested certain more items of expenditure which should be allowed. On the other hand, other friends want that some items of expenditure shoutd not be allowed. It is very difficult to specify what should be allowed and what not. Therefore, Sir, why not leave it to the judgement of the ITO ? After all, he is a competent man. selected after careful scrutiny and trained properly. Why

he should not be relied upon, I fail to uuderstand. I have a quarrel with the Ministry on this score. Why not rely on your own tools ? Instead of enumerating the items, why not leave it to the good sense of the ITO, to his judgment whether the type of expenditure claimed are to be amortised or not ?

Sir, so far as expenses in a business are concerned, generally they are of three kinds : Either it is a revenue expenditure, which should be allowed against the income; or is a capital expenditure on which depreciation is to be allowed; or of the nature described here which is to be amortised.

Sir, you may go on adding items to this list, but you will never be exhausted. Therefore, in the end, by sub-clause (d) it has been provided that "such other items of expenditure may further be allowed...as may be prescribed." Prescribed by whom ? Prescribed by the Board of Direct Taxes. Sir, you know that this Board of Direct Taxes is a very slow moving machinery, not because that they are not sufficiently intelligent or efficient but because they are so overloaded with work that they are unable to move in the manner they would like.

Just to quote an example, in the Finance Bill of 1970 we made certain changes in the matter of investments by charitable trusts. In the Tax Advisory Committee certain points were raised and the Board gave an assurance that they would be considered, but up till now they have not been considered. The target date of 31st December is nearing, and I do not know what the assessees are to do. Therefore, whenever there is a question of adding some item here and there, the matter has got to be sent to the Board and it will take its own time. For that my submission is that you leave it to the good sense of the Income Tax Officer.

As I said the ITO is a competent officer. He is reliable and trustworthy. Once you appoint a man, you must believe in him to do the job properly. When he has the power to make assessments on crores of rupees, certainly he can be given the power to decide the items which need amortisation. Therefore, my submission is that all these items of expenditure should not be enumerated andI want the omission of the words "specified in sub-section (2)". Secondly, I want the omission of the whole sub-section (2) of 35-D. Thirdly, after line 26 in page 8 I want add the words :

> "which is not allowable as a deduction as a revenue expenditure or otherwise under any other provision of the Act"

Therefore, instead of burdenning the Board with the unnecessary task of deciding each item, it should be left to the discretion, good sense and judgment of the Income Tax Officer himself.

SHRI S. S. KOTHARI : I would like to strike a different chord from what we have listened to from some of my Hon. Colleagues. I feel that the Board of Direc-Taxes, in indicating that concerns of this nature should be approved, has broably in its mind the fact that the consultancy profession should develop along the right lines, The consultancy services dealing with feasibility report, project report, engineering services, technical services, management accounting services etc., have to be developed in this country. I remember the days about 30 to 40 years ago when we had what we called discriminarary protection, and infant industry protection, to develop industries in our country. In foreign countries, the consultancy profession has developed and gone far ahead of us, but in our country I find that practically there is nothing like a consultancy profession in the real sense of the term except for one or two firms. That has to be developed and in order to develop it, the Central Board of Direct Taxes would have to provide proper rules and proper guide lines so that it comes up in the right manner. But they also have to nurse it from the income-tax point of view. Unfortunately somehow the incidence of taxation upon the consultancy companies is far more than other companies—65 per cent compared to 55 per cent on manufacturing companies, which do not have to distribute their profit. Consultaucy firms have to distribute their profit under section 104. It means that the consultaney profession cannot actually come up. It may be in any form, say, partnership firms, But the

[Shri S. S. Kothari]

there also the incidence is high. There is the tax, and there is surcharge and then super surcharge. This profession is bowed down with tax in India. The Central Board of Taxes should ease this burden by providing suitably in their rules and regulations; it has a reciprocal obligation. It must assist in the development of the consultancy profession in the country so that the firms are able to render efficient service to industry, not only during the planning stage or construction stage but also after the gestation period is over and the company or industry is actually working. At that stage also consultancy services such as quality control and other engineering and technological services are needed to improve the working of industry; such is the case in the United States and other countries where professional people have come up but in this country such persons are practically non-existent. I have also written to the hon. Minister and I hope he would consider it. My submission is that consultancy profession should be developed in this country.

This is the first year when the Government had accepted the principale that preoperation or preliminary expenditure should be amortised. It is a good beginning. Why has the Central Board of the Government forgotten their own favourite phrase ; wholly and exclusively incurred for the purpose of [company's business ? That could have been applied here also. If bona fide expenditure had been incurred wholly and exclusively for the purpose of company's business before it commenced its operetion and if the department is satisfied that it is to, I think it should be allowed. It appears to be a reasonable plea. But there is no hurry about it; we can pass the Bill as it is now and subsequently on the basis of experience, let the Government take the initiative and gradually liberalise if it feels that it would be in the interest of the development of a healthy corporate sector.

The rules framed by the Central Board should be reasonable and practicable so that deserving and efficient concerns and professional people are not excluded from the scope. If they are not recognised by the Central Board, obviously no company would like to take their services because the charges paid to them would not be allowed for amortisation. The Board would have to take into consideration all these factors and the rules should be liberal. I feel that this is a good beginning and this is a welcome clause.

Shri N. K. P. SALVE : I have no intention of waxing eloquent because I have realised that the Minister has been very unresponsive and unsympathetic to the oratorial talents and the facade of scholarship. I shall adopt the commonsense approach and I hope he and you will be indulgent. My first submission is this. I am speaking with reference to amendments 115, 116 and 117.

Mr. CHAIRMAN : Only 116 and 117, 115 is the same as 70.

Shri N.K.P. SALVE : My arguments are entirely different. Can I agree with Mr. Somani ? He says Mr. Salve might be accepted by the Board. How is that fair, Sir ? Can I accept that argument? (*Interruption*) : I am entire agreement with what the Minister stated the other day, that a cautious approach is necessary. This concept of amortisation is an innovasion utterly novel to the law of taxation. Therfore, so far as the cautious appoach is concerned, we are entirely with him out the cautions approach is well taken care of, once he has fixed the quantum, a ceiling, beyond which one cannot go. The amendment that I am contemplating in 115 is this. In fact, my quarrel is with vesting the Board of Director Taxes the power and authority to distribute what might be patronage and favour. The Minister said that such authority must be vested in the Board of Direct Taxes to approve the professionals who may be making the feasibility report, project report and market survey report and so on. They must seek the approval of the Board of Direct Taxes and only when such approval is sought, the expenses incurred on them would be allowed for the purposes of amortisation. The Minister stated that this is necessary because otherwise it

might be unholy collusion. To that extent, I appeal to the Minister's sense of logic and reason only. Do I understand the Minister to say that someone has approved in the CBDT, it means thereafter there is going to be no abuse? The contemplated provision, and the object which the Minister says is being achieved with that, have absolutely no nexus. After all, it is the ITO who will have to determrine and judge whether the expenses claimed for feasibility expenses, project report expenses, market survey expenses are genuine and bonafide or not. The Board's approval is absolutely no guarantee against collusion, against conspiracy.

The secondly, — this is very much more important-aspect is this. The CBDT is already overloaded with work. There are other squares in which they can act and act efficiently and lesson the burden on the tax-payer. Why are you adding to it? (*Interruption*). If Mr. Dandeker approves of what I say, the Minister will not accept it.

Sir, my respectful submission is, the CBDT is already overloaded, It has the statutory authority in terms of section 116 of the Income-tax Act. In one of the recent cases in the Delhi High Court, a notice issued under section 147 for reopening an assesment was stuck down as ultra vires and invalid, because the Chairman of the Board had not himself sined the satisfaction which was necessary, a *sine qua none*. They do not have the time to do the work vers satisfactorily, the duty cast on them. I know their lot. They are a hard-worked people. They are working very hard. Therefore, we are unnecessarily vesting these duties on them. Who will sit in judgement as to whether a particular consultancy or professional has the requisite expertise or not? on whether one should be approved or not? My submissson is, do not nnnecessarily make the law cumbersome; do not make the system more cumbersome and onerous for the Board of Direct Taxes.

Then I come to 115 and 116. I submit that in terms of 116, kindly allow amortisation for technical knowhow. In terms of 117, I am submitting that you should allow amortisation on pre-incorparation expenses of the company's amalgamation or merger. My reasons are veey simple. Firstly, what was the object? If one went to the object, one would see the position from the marginal notes in the Act himself. This is a new section which are going to insert. It says: "Section 35-D ; amortisation of certain preliminary expenses." "Preliminary expenses" is something which will not be amortised. I do not be amortised. I do not for a moment suggest to the Minister that he should give up the cautious approach. But where the very genesis, colour and charactor of the expenditure are such that they are on a par with feasibility reports, project reports, market survay reports, etc., what is the rationale behind their exclusion? That ther are all of the very same genesis and they should have been included was also impliedy accected by the commitee. Fortunately, the Chairman is not present. To assuage its concience, the report of the committee says :

"While considering the amendments given notice of by members to this clause for inclusion of further items of qualifying expenditure for the purpose of this provision, the committee was informed that the case for lump inclusion of item such as lump sum payment for technical knowbow and expenditure incurred in connection with amalgamation or merger of two or more companies, would be examined while prescribing further items of qualifying expenditure in the income-tax rules .." etc.

Where is the warrant for this differential treatment ? Are these expenses not of the very same nature as those which are sought to be amortised? If they are so, what is the warrant not to leave the decision in the hands of Parliament itself but to leave it to the Central Board of Direct Taxes, which is as I said, hardly worked already?

SHRI VIDYA CHARAN SHUKLA: Taking Mr. Jha's amendment first, if his amendment is accepted, whereas the period of ten years would be retained, the preliminary expenditure would be amortised within a period of 20 years. That is the effect of saying "one-twentieth".

[Shri Vidya Charan Shukla]

This would create a great deal of difficulty because only half the expenditure in a period of 10 years would be amortised.

I do not claim, as Mr. Somani put it, that this is something being done for the first time in the world. But this is being done for the first time in the country. Therefore, a very cautious approach is necessary in all directions. If some more items have to be allowed, they can definately be allowed in future. We should have some experience of the working of this particular provision first and then we can see what further items could be allowed. It is not correct to say that once we allow amortisation, we should allow as many items as come to our notice or as seen necessary at the first look. We will have to be a little careful.

The question of approval by the board has exercised certain members. I quite understand their objections. I also understand the argument given by Mr. Somani that certain new firms might spring up consisting of new entrepreneurs, new engineers, new professionals who would like to come up into the field, but the CBDT may not have enough knowledge about their work. I would like to say that if a new firm comes up with people who have enough experience or qualifications and the technical knowhow the mere fact that the firm is new will not stand in the way of the Board giving its approval unless there is something negative or against those people who constitute the firm. The Board will see who constitute the firm and what is their background experience etc. If everything else satisfactory, there should be no objection, normally, speaking to approve such firms. Suppose we accept the amendment that the Board of Direct Taxes should have nothing to do with the approval, then can Shri Salve or anybody else say that there is no unholy collusion? I can accept the argument that the approval of the Board cannot completely rule it out. In spite of the Board's approval, cases or instances of unholy collusion could not be completely ruled out. But if it is completely taken away, in all commonsense, such instances are likely to be more than when this approval is prescribed.

We have no experience of the working of this particular provision of law. After some experience if we find that this approval by the Board is not functioning in the way in which we devised it or concieved it, then we can consider the whole matter. But until we know how it is going to function we are not in a position to accept any such suggestion regarding this particular matter.

Then, Shri Dandeker reffered to the shifting of indrustry from one place to another whithin the same State. There is some force in his argument. There is no doubt about it. Shri Dandeker would remember that when this matter was discussed in the Select Committee appoint was raised by the representative of the Law Ministry that this might be continued as discrimination under our Constitution, if you disallow movement of an indusrustrial unit from one State to another but allow it within the same State.

SHRI N. DANDEKER: It is not a question of tax concession, which is a different matter.

SHRI VIDYA CHARAN SHUKLA; Yes, amortisation expence of such shifting would be allowed in case it is shifted within the State and such expences would not be allowed to be amortised when it is moved from one State to another. That was the question which was raised. Unfortunately, I was not in the select committee when this question was raised. I am told that when this question was raised, it was pointed out by the Law Ministry that this might amount to discriminatian. This point has to be examined before we can make up our mind on this particular matter. As far as the argument of Shri Dandeker is concerned, I concede there is force in what he says. If a particular industrialist, with the permission of the State Government, wants to move within the State from one face to another, to relieve congestion or for some other reason, why should the expense not be allowed for amortisation?

SHRI KANWAR LAL GUPTA: What is the difficulty in allowing even in the case of shifting from one State to another?

SHRI VIDYA CHARAN SHUKLA : I will come to that. I was saying that in this particular case while from the viewpoint of logic there might not be any objection, from the constitutional point of view this matter will have to be examined before we can accept this amendment.

Shri Gupta has now asked what the harm is in allowing industrial units from shifting from one State to another. Looking at the political map of the country we see that there is political stability in some States and instability in some other States. Conditions differ from State to State and also from time to time. States which are stable now may become unstable later or *vise versa*. If shifting from State to State is encouraged, it will give rise to unhealthy trends and lead to concentration of industries or the complete absence of industries. When the question of different States comes up, it should not be viewed in the same way as shifting within the State.

SHRI KANWAR LAL GUPTA : It will be with the permission of the State Government.

SHRI VIDYA CHARAN SHUKLA : I do not like running arguments. I do not claim that I can satisfy Shri Gupta on every score. But this is my viewpoint, as far as this particular matter is concerned. The question of small and big companies has also been raised by Shri Gupta. This was examined in great detail in the Select Committee. The figure that I have seen does not show that if the limit of $2\frac{1}{2}$ per cent is not kept in the case of small companies, it will give them any particular advantage. The experts have gone into this matter because this was a point which apparently looked feasible that there should be some difference between the big and the small companies, but when the matter was gone into detail it was found that it would really not make much difference as far as amortisation of expenses went if the percentage is kept at $2\frac{1}{2}$ per cent fixed or if it is not kept so fixed in the case of small companies. This is a matter of detail and if you have some time I should like to convince you. But I would not like to take the time of the House for going into details in this particular matter.

About the foreign companies, when I moved for the consideration motion I mentioned this matter and I would like to repeat the same arguments. We do not want foreign companies, even though they are described as domestic companies and are also distributing dividents in India, if they are registered outside the country to get any tax concession in this respect howsoever small they may be. It is a matter of policy from which we will not be able to deviate. We will not be able to give any such concession to a foreign company even though it may have domestic operations and may have a large domestic shareholding. As far as it is a foreign company, we would not like to give it any tax concession or tax incentives.

SHRI S. S. KOTHARI: About the consultancy proffession will he say something? That is a very important point that I made:

Mr. CHAIRMAN : Kindly resume your seat. I am now putting the various amendments to the vote of the house.

Amendments No. 10 to 13 were put and negatived.

Amendment Nos. 44 to 47 were put and negatived.

Amendments Nos. 61 to 63 were put and negatived.

Amendment No. 70 was put and negatived.

Amendments Nos. 71 and 86 were put and negatived.

Amenaments Nos. 72 and 73 were put and negatived.

SHRI N. DANDEKER : I beg leave to withdraw amendment No. 74 in view of the assurance given by the Minister that the only difficulty is the constitutional one and he will get it examined.

Mr. CHAIRMAN :·Has the Hon. member the leave of the House to withdraw his amendment No. 74 ?

SOME HON. MEMBERS : Yes.

Amendment No. 74 was, by leave, withdrawn.

MR. CHAIRMAN : Now I am putting the other amendments to the vote of House.

Amendments Nos. 82 to 85 were put and negatived.

Amendment Nos. 89 to 91 were put and negatived.

MR. CHAIRMAN : Shri Kothari's amendment are the same as have already been disposed of. Now I shall dispose of Shri Salve's amendments.

SHRI N. K. P. SALVE : I beg leave of the House to withdraw my amendments in view of the assurance given by him.

SHRI KANWAR LAL GUPTA : We will not permit him to withdraw them.

MR. CHAIRMAN : So far as amendment No. 115 is concerned, it is the same as amendment No. 70 and it will be deemed to be barred. So far as Amendment Nos. 116 and 117 are concerned, they will be withdrawn with the leave of the House.

SHRI KANWAR LAL GUPTA : Even one Member can object.

MR. CHAIRMAN : Then, I put Amendment Nos. 116 and 117 in the name of Shri Salve to the vote of the House.

Amendments Nos. 116 and 117 were put and negatived

MR. CHAIRMAN : Now, I put clause 8 to the vote of the House. The question is :

"Clause 8 stand part of the Bill"

The motion was adopted

Clause 8 was added to the Bill

Clauses 9 to 15 were added to the Bill

Clause 16—Amendment of section 64 of Income Tax Act.

SHRI KANWAR LAL GUPTA : I beg to move :

Page 14, line 43,—

after "family" *insert*—

"and where the converted property has been the subject matter of a partition (partial or total) amongst the members of the family." (48)

Page 15, line 3,—

omit "for being held by them jointly." (49)

Page 15,—

for line 4 to 22, *substitute*—

"(b) the income derived from such converted property or any part thereof as is received by the spouse or minor son in partition shall be deemed to arise to the spouse or minor son from assets transferred indirectly by the individual to the spouse or minor son and the provisions of sub-section (1) shall so far as may be, apply accordingly, provided that the income referred to in clause (b) shall on being included in the total income of the individual be excluded from the total income of the spouse or the minor son of the individual." (50)

Page 15,—

after line 18, *insert*—

"Provided that nothing contained in sub-section (2) shall apply to the conversion of assets to such person in a case where the market value of the asset does not exceed rupees twenty-five thousand." (51)

SHRI LOBO PRABHU : I beg to move :

Page 14, lines 37 and 38,—

omit "a Hindu" (64)

Page 15, line 7,—

(i) *omit* "to the individual and not"

(ii) *after* "family" *insert*—

"as long as it is not partitioned and is composed of spouse and minor children" (65)

SHRI BENI SHANKER SHARMA : I beg to move :

Page 14, line 43,—

after "family" *insert*—

"and thereafter partitioned the same within a period not exceeding three years without any *bona fide* causes or reason" (92)

SHRI N. DANDEKER : I beg to move,

Pages 14 and 15,—

for lines 37 to 48 and 1 to 22 respectively *substitute*—

"(2) Where, in the case of an individual being a member of a Hindu undivided family,—

(a) any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such property with the character of property belonging to the family or by throwing it into the common stock of the family (such property being hereinafter referred to as the converted property), and

(b) where such converted property has been the subject matter of a subsequent partition (partial or total) amongst the members of the family,

then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force for the pursose of the computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1970, the income derived from such converted property as is received by the spouse or minor son of the individual after such partition shall be deemed to arise to the individual from assets transferred indirectly by him to the spouse or minor son and the provisions of sub-section (1) shall, so far as may be, apply accordingly :

Provided that the income referred to in this sub-section shall, on being included in the total income of the individual, be excluded from the total income of the spouse or minor son of the individual." (107)

108. Page 15,—

omit lines 30 to 37 (108)

SHRI N. K. P. SALVE : I beg to move,

Pages 14 and 15,—

for lines 37 to 48 and 1 to 37 respectively,

Substitute—

2. Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property the individual has, at any time after the 31st day of December, 1969 been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family (such property being hereinafter referred to as the converted property), and the converted property has been the subject matter of a partition (partial or total) amongst the members of the family, then notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971, the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly and the income derived from such converted property as is received by the spouse or minor son on partition shall be deemed to arise to the spouse or the minor son from

[Shri N. Dandeker]

assets transferred indirectly by the individual to the spouse or minor son and the provision of sub-section (1) shall, so far as may be, apply accordingly :

Provided that the income referred to above shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse or minor son of the individual.

Explanation—For the purposes of sub-section (2)—

"Property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property. (118)

SHRI TENNETI VISWANATHAM (Visakhapatnam) : I beg to move.

Page 14, lines 39 and 40,—

for "31st day of December, 1969"

Substitute—

"date on which this Act comes into force" (123)

page 15,—

after line 22, *insert*—

"Provided further that the provisions, of this sub-section shall not apply in cases where the converted property or any part thereof has not been subject matter of a Partition—total or partial amongst the members of the family within five years from the date on which the individual converted his separate property into converted property except in *bona fide* cases :

Provided further that the provisions of this sub-section shall not apply to cases where the converted property consists of one residential house and its market value does not exceed rupees one lakh and the joint family consists of at least two male members." (124)

श्री कंवरलाल गुप्त : सभापति महोदय, संयुक्त हिन्दु परिवार के सम्बन्ध में आज तक जो सुविधा प्राप्त थी, इस क्लाज में उसको वापिस लेने की बात कही गई। उसका एक ही मुख्य कारण बताया जाता है कि सरकार के सामने ऐसे कई उदाहरण आये हैं, जिनमें इस व्यवस्था का गलत ढंग से उपयोग किया गया है और संयुक्त हिन्दु परिवार टैक्स बचाने की एक मशीनरी बन गई है। इसलिए सरकार ने यह सोचा कि आज तक जो कनसेशन संयुक्त हिन्दू परिवार को दिया जाता था, वह वापिस ले लिया जाये।

पहला सवाल तो यह है कि इसके कारण टैक्स की कितनी बचत होती है। अगर यह बचत थोड़ी है, तो मैं समझता हूँ कि हजारों सालों से चले आ रहे संयुक्त हिन्दू परिवार पर चोट करना गलत होगा। यह एक खतरनाक कदम है, जो बहुत भयानक शक्ल अख्त्यार कर सकता है। मैं आपकी आज्ञा से इस सम्बन्ध में कुछ सरकारी आंकड़े रखना चाहता हूँ। मैं चाहूंगा कि मंत्री महोदय इस की पुष्टि करें।

15.49 hrs.

[SHRI K. N. TIWARY *in the Chair*]

डिपार्टमेंट ने दिल्ली, अहमदाबाद, बम्बई और कलकत्ता, इन चार शहरों में एक सरवे कराया कि संयुक्त हिन्दू परिवार के कारण एक साल में टैक्स की कितनी बचत की गई है। यह मालूम हुआ कि एक साल में टैक्स की बचत केवल 9,34,549 रुपये हुई।

यह हो सकता है कि अगले सालों में दो चार पांच लाख ज्यादा हो या कम हो। और टोटल रेवेन्यू इस साल का जो होने वाला है इनकम टैक्स से वह 423 करोड़ रुपये होने वाला है। 423 करोड़ में से केवल 9 लाख रुपये की बचत होगी अगर सरकार जो चाहती है वह मान लिया जाय। मतलब यह हुआ कि ·01 परसेन्ट भी इसमें सरकार को आम-

दनी नहीं आऐगी । कोई बहुत बड़ी चीज नहीं है यह । लेकिन उसका समाज पर कितना गहरा असर होगा उसके बारे में मैं मंत्री महोदय का ध्यान दिलाना चाहूंगा और यह चाहूंगा कि इसके ऊपर वह दोबारा विचार करें । यह मैं मानता हूं कि अगर किसी प्रकार से टैक्स की चोरी होती है तो उसको रोका जाना चाहिए । तो एक तो मेरा संशोधन यह है कि अगर कोई भी व्यक्ति अपना रूपया कमा करके संयुक्त हिन्दू परिवार में डाल देता है तो उसके ऊपर एतराज नहीं होना चाहिए क्योंकि यह उसका रूपया है, वह कैसे अपने परिवार की भलाई के लिए या आगे के लिए उसको इस्तेमाल करता है यह उसके देखने की चीज है। यह उसका मौलिक अधिकार है । इसलिए जब तक उसका दुरुपयोग शुरू न हो जाय तब तक आपको मुश्तर्का खानदान मानना चाहिए । मैंने संशोधन में यह कहा है कि अगर एक व्यक्ति अपना रुपया मुश्तर्का खानदान में दे देता है तो जब तक उसका बंटवारा नहीं होता तब तक यह जो विधेयक में बात कही गई है वह लागू नहीं होनी चाहिए । जब बंटवारा हो जाय और जिसके कारण से टैक्स बचता है वह बात जब शुरू हो जाय तब आप उसको पकड़ सकते हैं और तब जो आपने कहा है उसको मैं भी स्वीकार करूंगा । लेकिन आप शुरू से यह कहें कि कोई व्यक्ति मुश्तर्का खानदान में अपना पैसा डाल ही नहीं सकता, अगर वह डालेगा तो उस पर टेक्स लग जायगा या ज्यादा टेक्स लगेगा, मैं समझता हूं यह चीज ठीक नहीं होगी क्या मंत्री महोदय यह नहीं समझते कि कुछ ऐसे केसेज भी हो सकते हैं कि जो बहुत हार्ड कैसेज हों ? एक आदमी बीमार है, जैसे अभी खाडिलकर जी का केस हैं, बुजुर्ग आदमी है या और कोई हार्ड केस है जिसमें वह अपने परिवार के लिए, आगे के लिए सुविधा रखना चाहता है, वह यह चाहता है कि उसका रुपया मुश्तर्का हिन्दू फेमिली में डाल दिया जाय तो क्या मंत्री महोदय यह रूल आउट करते हैं कि कोई भी ऐसा हार्ड केस नहीं हो सकता ? ·····(व्यवधान)·····में यह कह रहा था कि ऐसी कोई कठिन बात परिवार के लिए आ सकती है जिसमें यह दिक्कत पैदा हो कि मेरी मृत्यु के बाद मेरी पत्नी या मेरे परिवार को कोई दिक्कत आ सकती है और ऐसे केसेज में वह अपना पैसा मुश्तर्का खानदान में डाल दे ताकि उस पैसे का दुरुपयोग न हो, एक तरह से वह इंश्योरेन्स होगी, उसकी लडकियाँ होंगी, उनकी शादी उससे हो सकती है या बच्चों के पढ़ने का इंतजाम हो सकता है, तो इस तरह से यह स्थिति हो सकती है, इसमें कोई दिक्कत वाले केसेज नहीं होंगे ऐसा मंत्री महोदय नहीं कह सकते । कम होंगे, लेकिन हो सकते हैं । उसके लिए मैंने प्रार्थना पहले तो यह की है कि आप मेरा पहला संशोधन मान लीजिये जिसमें यह कहा है कि अगर एक व्यक्ति मुश्तर्का हिन्दू खानदात में पैसे डालता है तो जब तक वह बंटवारा नहीं करता तब तक यह उसपर लागू नहीं होना चाहिये । अगर आप उसको नहीं मानते तो मैंने दूसरा जो आलटेरनेटिव दिया है वह यह दिया है कि कम से कम 25 हजार रुपये तक तो यह छूट होनी चाहिए कि अगर कोई आदमी 25 हजार रुपये मुश्तर्का खानदान में डाल दे तो जब तक उसका बंटवारा न हो तब तक उस 25 हजार रुपये पर छूट हो, 25 हजार रुपये से ऊपर हो तो छूट न दीजिये । लेकिन 25 हजार तक तो जरूर छूट दीजिये । क्योंकि किसी की लड़की की शादी होनी है, किसी को अपने बच्चों को पढ़ाना है, इस तरह की बातें हो सकती हैं । उसके लिए यह इंश्योरेन्स के तौर पर हो जायगा । इतने ही शब्दों के साथ मैं मंत्री महोदय से कहूँगा कि इससे शासन को बहुत फर्क नही पड़ेता और यह मेरा 25 हजार वाला जो संशोधन है इसको वह मान लेंगे तो उससे काफी हिन्दू परिवारों को खास तौर से जो नीचे के तबके के लोग हैं, गरीब लोग हैं, उनको बहुत सहारा मिलेगा और इस तरह से आप एक बहुत बड़ी सहायता करेंगे ।

सभापति महोदय : एक बात आप लोगों से निवेदन करनी है कि साढ़े चार बजे

[सभापति महोदय]

इसको खत्म हो जाना चाहिए था क्लाजेज को लेकिन हम उससे ज्यादा समय लें रहे हैं। इसलिए जहां तक हो सके थोड़ा समय आप लोग लें।

SHRI LOBO PRABHU : I would like to have the understanding and compassion of this House to the amendments I am moving. This concession applies to the Hindu undivided families. But I would like to put it to this House that it should also apply to the Christian and Muslim undivided families. (*Interruptian*). My good lady here says I would like to infrom here that structure of the Indian famils is the same– we are Indians to the core; there is no difference in the way we feel towards each other, the way property is distributed, the way customs are formed. So, Sir, this distinction which is being made in this respect is not fair. They are without doubt the poorest sections of the society and barring one or two or a few instances, hardly any Muslim or Christian or for that matter any Sikh, could qualify to the same average income as Hindus. Would you like a smaller section of the community to be deprived of a concession which you give to the richer and bigger section ? That is the point.

Mr. Gupta has been pressing for a common civil law. This is the beginning which Mr. Gupta can make. If they declare they are undivided family, they may get-the benefit of this concession. You should not keep this concession only for the majority community. Mr. Gupta is anxious to have a common Civil Law.

SHRI KANWAR LAL GUPTA : I will support him provided he takes away his own right to have four wives.

SHRI LOBO PRABHU : I wish I had that right and I would willingly concede to Mr. Gupta that he can take my three wives.

SHRI KANWAR LAL GUPTA : I am more than satisfied by one wife.

SHRI LOBO PRABHU : I don't know why he should be concerned about other people having more wives than one, when he is satisfied with one. Rathor he should pity them. We are not giving to non-Hindu undivided families the benefit of minimum exemption in Income-Tax. They have to pay probate tax. They have to pay wealth tax on individnal bassis and not on joint basis. The same case is for Estate Duty also. It is on the whole property of the individual and not of his share in the undivided family.

The Minister is anxious to have a secular State. His party is anxious to placate the minorities. I hope he will consider this amendment so that this concession will apply to all undivided families. I therefore, request, delete the word 'Hindu'.

17 hrs.

SHRI N. K. SOMANI : I would have no objection to this proposition of withdrawing the recognition of the HUF from the income-tax entity point of view, if all was well with the country.

I said a couple of days ago while participating in the general debate that if there were no unemployed in this country—the word 'Hindu' comes in incidentally, because it so happens that Hindus had been carrying on this traditional form of joint family life, and there has been an income-tax acknowledgment of it also—if there were absolutely no unemployed in this country, if there were no invalids who had been reduced to the level of penury because of our economic conditions, if there were no sicknesses, and this Government would look after the sicknesses and economic and social problems of the Hindus as well as other classes of our citizens and citizens of other communities, then one would have no quarrel with this withdrawal of recognition or the suggestion that the recognition given to the HUF institution should be withdrawn in the income-tax sphere. But the whole House and the country knows that we are in no shape at all in regard to this matter. Therefore, repeatedly, we had raised this matter at the Select Committee stage. The hon. Minister in charge of the Bill now was not there at all, but even Shri P. C. Sethi could not answer this

question, when we pointed out that as far as the tax avoidance is concerned, as has been pointed out by Shri Kanwar Lal Gupta, the amount has been so meagre and paltry; we had quoted the figures given by their own commissioners of income-tax relating to four largest tax-paying centres in this country. These figures were so small and paltry that we asked them what is the rationale behind this ? Why are you disturbing or upsetting the system by withdrawing the recognition as far as the HUF is concerned ? There was absolutely no answer forth-coming, and no rationale was provided as to why this was necessary.

I would like to emphasise that the HUF has proved to be some kind of a mutual co-operative insurance system looking after each other's relatives, looking after the invalids and the unemployed; it is some kind of insurance system which has been working in this country from times immemorial in the shape of the HUF. So, when this has proved to be such a fine institution, when this has not been an instrument of any large-scale tax avoidance which has bothered or invited the attention of Government, I do not understand why recourse is being taken to the abolition of the HUF as far as the income-tax law is concerned.

In our amendment No. 107, Shri N. Dandeker and I have proposed that even if tax avoidance objection was there, so long as a particular hotch-pot of the HUF was created specifically for the sake of the minors and the dependents, and it was not further partitioned, and there was no speculative activity and there was no misuse and no direct evidence of tax avoidance, this institution should continue to be recognised by Government. So, we have sought to meet the objection from the tax avoidance point of view as well as the other objections raised by Government. I would therefore, respectfully plead that they should not tinker with this institution without having anything to give to society at large on the lines that I have just mentioned.

SHRI N. K. P. SALVE : With utmost respect, I would submit that I am unable to agree with Shri Kanwar Lal Gupta when he says that the provisions as contemplated in the Bill are going to hit at the very root of the institution of the HUF. I am equally surprised at the comments made by Shri N. K. Somani that no rationale has been stated about this matter. The history of the enactment of this amendment is absolutely clear.

The Supreme Court laid down in the case of *Keshavdas Lallubhai* that if an individual *via* the institution of the joint family transferred the property to the spouse or the minor children, then the income attributable to the transferred assets, which is described as converted property in the Bill, cannot be taxed in the hands of transferor, whereas if anyone else, a Hindu, directly gives to his minor children or to his spouse, the income attributable to such transferred property would-none-the-less be taxed in the hands of the transferor. What greater rationale could be there than this that if nobody else in the country can transfer property to a minor child or to his spouse without attracting the liability of any income attributable to such property being taxed in the hands of the transferor, then why should this facility be given to a person merely because of this device of routing the property *via* the joint family ? That is one aspect of the matter.

But my amendments have a different objection to the law as contemplated. My objections are in fact two fold. The object of the amendment was that merely by putting some self-acquired property in a common hotch-pot of the joint family, one should not be allowed to use the HUF as a mere device; in other words, it should not matter to the joint family at all. There are no hard-line cases because it is merely going to the minor children or the spouse, and it does not go to anybody else, in any case, even if it was not a joint family, whether it was going to a minor or a spouse, the hard line would be equally there. The hard line cases would be there in either case. But what happens ? To forestall this type of device of self-acquired property being routed by HUF, to the extent it is taxed in the hands of the transferor in respect of properties which went to the minor or to the spouse, I would absolutely have no objection. That would be in confermity with Sec. 64 as

[Shri N.K.P. Salve]

applicable to everyone else. But what has happened ? Under the garb of achieving this objective, the scope of Sec. 64 is widened. Fiction upon fiction is created, that even if the property is not partitioned,even if it is not given to a minor, even if it is not given to the spouse, it is contemplated that to the extent it represents the interest of the minor or spouse it would be taxed in the hands of the transferor. If the transferor gives his property to his brother, sister, nephew or niece, although personal income from such gifted property is not to be taxed in the hands of the transferor, may I know ··

SHRI VIDYA CHARAN SHUKLA: If they are grown up ?

SHRI N. K. P. SALVE : Even minor niece or nephew. If I transfer my property to my nephew, minor nice, sister-in-law, brother-in-law—I would not do it, because I have none—such income attributable to such gifted property would not be taxed in my hands. Why then is it sought to extend the scope of Sec 64 ? To the extent it was sought to be amended to remedy the law as indicated by the Supreme Court, one can understand it. But what is more, against my objection in my minute dissent, the Hon. minister answered that he wants to make the provision absolutely foolproof and in case the suggestion made by me is accepted and if the properties are not partationed in future, the properties put in the common hotch-pot of HUF may not be indentifiable and the working out will be found difficult by the department. It will be infinitely much more difficult if the law is kept as it is. It is very simple to explain. By a series of fictions, it is sought to be provided in the law. The HUF may have a hundred properties. This one particular property is to be treated as converted property. There are 99 other properties; I put my acquired property as the 100th in the HUF. The ITO will have to keep a trail of all the 100 properties. If they are not separately identifiable, may I know how the difficulty is going to be solved ? Is it not going to be more ?

Therefore, so long as the HUF remains and it is not partitioned, both in the interest of achieving the objective of the law and of simplifying the law, already considerably complicated, we should not add to the complications.

My amendment is that as long as the property remains in the HUF, if it is not partitioned, the income attributable to converted property should not be taxed in the hands of the transferor; it should only be taxed when it is transferred to the minor child.

SHRI TENNETI VISWANATHAM : Although Shri Salve did not agree with Shri Gupta, Shri Somani and Shri Dandeker and others, he supported them exactly in the end. That is why I also stand to support it.

All of us know that in regard to the HUF arguments have been very ably stated and I do not like to repeat them at this late hour. The department proceeded under an assumption that if the calculation or identification of the converted property is difficult and if the revenue implications are very slight, they may not undertake this; they assumed that this provision will not be applied where the ITO is of opinion that such a course is not likely to result in benefit to revenue. What was their second assumption ? They saw the judgement of the Supreme Court. They did not work out actually what were the results, whether there were conversions and what was the impact on revenue. They simply took the decision and therefore, immidiately brought the amendment. They had been considering the amendment for a long time and after two years when the Select Committee sat and asked for the figures on the basis of which they arrived at this decision, namely to treat converted property as the transferor's own property, they said that the figures were not available. A second time they were asked and then they gave a long explanation saying that the time was too short for them to get at figures. If they did not work in the beginning, on what basis did they introduce the provision at all ? It is a reckless method of drafting legislation. When finally on the insistence of the Select Committee they gave some figures, what was the conclusion drawn from the figures not by Mr. Somani

not by us,but by the officer who worked out the figures ? The sentence reads :

> "On the basis of the above results it is difficult to draw any general conclusion as to the extent to which this device of tax avoidance has been adopted by taxpayers."

SHRI VIDYA CHARAN SHUKLA : Read the next sentence also:

SHRI TENNETI VISWANATHAM : I shall do so, It reads :

> "Even if the figures against Bombay are taken as indicating the general position, the additional revenue for one year by applying the provision in Clause 14 to conversions effected during the period of 1965-69 may be estimated to be of the order of 0.14 per cent of the Budget estimate of Rs. 423 crores."

Is it on the basis of such facts that legislation must be resorted to ? And then with what result ?

What are you doing ? You are trying to temper with the law which is well understood by the whole country except perhaps by those who are sponsoring this particular Clause. When a property is transferred to a Hindu joint family, so long as the general law of the land recognises the Hindu joint family, how can anyone, whether it is the Income Tax Department or the Finance Minister or anybody else, say that it will be still treated as separate property? When the waters of the Ganga and Godavari go into the Bay of Bengal, how can anyone say that this particular part of it is Godavari water and this particular part of it is the water of the Ganga ? It is an impossible thing.

If you only read Mayne's *Hindu Law*—he was the Advocate General of Madras for a long time and wrote one of the famous books on Hindu Law—about the genesis and nature of the joint family, you will find that in a joint family there is no such thing as a separate share which can be assumed except when there is a partition. Every atom of the property belongs to every member of the family.

SHRI N. K. P. SALVE : Do your arguments apply when there is partition ?

SHRI TENNETI WISWANATHAM : Partition is an accident of the joint family. It is because this law applies that partition also gives the method of division. The law always applies.

What is happening nowadays is that if we attack anything of ancient Indian orgin, we are supposed to be progressive. We are suffering from this disease. This kind of thing is of no use, particularly in Income-tax law.

As I said earlier, it will be "treated" as the transferor's property, but for how many years ? Which Board of Direct Taxes, which Finance Minister, which Income-tax Officer, after seven or eight years, can keep track of all these things ? It is an impossible thing because the law on joint family is so totally different from the concept of separate property and income-tax upon separate property. It is not for nothing that at the time of framing the original income-tax Act the joint family was treated as a particular unit by itself; it is because it is not possible for you to treat it as consisting shares of individuals; you cannot assume individuals as having shares in a joint family property. That is why the original framers of the Income-tax Act kept it separate. Because there is a larger amount of property they give it a separate rate. If you feel that this was used as a device you increase the tax rate on joint families if you like; but do not involve the department and the tax payers in continuous litigaiton. Perhaps you are also going to adversely affect the general tax payer by increasing the cost of collection and administration because thousands will have to be hanging in courts for years and years, if your law is passed. Therefore, let the Minister accept what Mr. Salve has said. The best course is to drop this clause altogether. The next best course is what we suggested in the Select Committee. I have put it in my amendment for his consideration. If you consider that HUF was employed as a device in spite of your own overments if there was partition of the property within forseeable future, 3, 4 or 5 years you have got the right to re-open upto 8 or 11 years. At least accept that

[Shri Tanneti Wishwanatham]

amendment. But without doing any such thing, if you want to have this Act you will only be landing the income-tax department and the assessees in continuous litigation for years and years. Whether it is five years or not is another thing. Supposing the joint family consists of two brothers. The house is transferred. Dwelling house is the final place where a man must lay his head after retirement from business or office; he must have some place wherein to lay his head. Bird in the air, says the proverb, has got a place to rest on but not the son of man. Let the son of man have some place to rest when everything is gone. After all it is only house property worth a lakh of rupees; do not attract the provisions of this clause to that property. These two are important amendments, I believe I have appealed to the reason of the Finance Minister; I also appeal to his heart. I would ask him to accept the advice of Mr. Salve, if not the bad advice of gentlemen here.

SHRI BENI SHANKER SHARMA : This clause in the shape it has emerged from the Select Committee is totally different from the original. On page xxiii of the Report, the Committee says :

"This clause has been amended in regard to the following matters :

.....income from separate property of the individual converted into property belonging to the Hindu undivided family of which he is a member will come within the scope of the provision in this clause only where the conversion has been effected after 31-12-1969. (The date originally specified in the Bill for this purpose was 31-3-1965)."

Originally the intention was that the income of the individuals who had thrown their individual property into the joint family hotchpot after 31-3-1965, after the famous Supreme Court case, should come under this provision. After much discussion in the Select Committee, it went through a thorough change and instead of applying the provisions herein with retrospective effect *i.e.*, from 31-3-1965; it was decided that they should be applied to HUFs brought into existence after 31-12-69.

Now, the whole object of bringing this clause, frankly, has been nullified. The intention of the Ministry was to bring under the taxation laws those cases where people have formed joint families for the purpose of taking recourse to legal avoidance of tax. That purpose having gone, I will humbly submit that the figures which have been quoted by my friends Shri Gupta and Shri Tenneti Vishwanatham referred to the income which could have accrued to revenue if exemption was given to joint families. If that aspect has been taken away. I would humbly submit that the tax incidence will be much less than what has been quoted by my hon. friends.

It may be remembered that there were the so-called big persons on account of which this clause was brought in.

MR. CHAIRMAN : The hon. Member's time is up.

SHRI BENI SHANKER SHARMA : I will finish in just two minutes. As I said, this is a completely misunderstood clause. It was only for the purpose of taxing those persons who had artificially formed joint families after 31-3-1965. Having left them out, I do not think there is any purpose in keeping their clause now on the Statute Book.

Mr. Sethi is here, and perhaps he will bear me out that it was as a sort of compromise that we had to agree to it. There was no substance in it. I will still say that by retaining this clause the tax effect on the whole will be much less than what was given by my hon. friends.

So far as the rights of the members of the joint family are concerned, the right of throwing the individually-earned income into the common hotchpot is a very old one and it should not be interfered with. H.U.F. is a socialistic institution and as I said the other day, it had so many purposes of fulfilling the needs of society. Therefore, it will be a great hardship on the institution of Hindu undivided family. As such I think we on this side as well those on the other side represented by Mr. Salve are one on this point; that is unless and until there is a partition of the

family,this provision should not be applied. That is to say the income from the property thrown in the common hotch-pot should not be added to the income of the individual unless and until there is partition of the family.

I would, therefore, specially draw the attention of the hon. Minister to this clause. This will hit hard not the big businessmen, but the common people who have an anxiety to make some provision for their families. The whole House is one on this point and I would request the Minister to accede to this unanimous demand.

SHRI VIDYA CHARAN SHUKLA : This amended clause does not seek to destroy the Hindu undivided family. Only certain tax concessions that were given are sought to be withheld by this amended clause. The hon. Members who have been labouring under the impression that the Hindu undivided family is going to be destroyed by accepting this amendment are not correct. This particular measure that is being made is only to effectively plug the loophole which was very effectively utilised for the past two years to avoid tax in a legal way.

AN HON. MEMBER : Rs. 10 lakhs.

SHRI VIDYA CHARAN SHUKLA : Not Rs. 10 lakhs. I am talking of the other cases where the properties were transferred and than partitioned. That was a way by which large scale tax avoidance was effected. What Mr. Salve has indicated and what has been indicated here is, if the amendment is effective only to the extent where the property put in them. Hindu undivided family is ultimately partitioned, what will be the effect. That is one point. Another point is what will happen if the property is put in the Hindu undivided family and not partitioned, what will be the effect of that. Therefore, the point that the hon. Member has made out, should be seen in this light. There, the tax avoidance will be very little. According to a study that has been made in a few cases for a particular period, it does not really indicate an all-India trend. We have had this matter examined. When I studied this, many of the points mentioned by Hon. members also struck me and I wanted to be sure that what we are doing is correct. Therefor, I got it examined again and discussed it at great length with the people who were responsible for drafting it. I found that if the property which is transferred to the HUF but is not partitioned is not taxed at the hands of the transferor, it will still keep the loophole intact and it will be used for tax avoidance in a fashion which will make this amendment completely ineffective. When this is not going to destroy the HUF, I do not know why members should be so exercised over this matter. It is only an attempt to plug the loophole effectively. That is all that is there about it. Therefore, I would request the House not to accept any of the amendments moved by Hon. members.

Mr. CHAIRMAN : Shall I put all the amendments together ?

SHRI KANWAR LAL GUPTA : Amendment No. 48 should be put [separately]

SHRI TENNETI VISWANTHAM : Mine also should be put separately.

SHRI N. DANDEKER : Mine also should be put separately.

Mr. CHAIRMAN : I will put amendments separately.

The question is :

'Page 14, line 43,—

after "family" *insert*

> "and where the converted property has been the subject matter of a partition (partial or total) amongst the members of the family."(48)

The Lok Sabha Divided

Division No. 7] AYES [17.33 hrs.

Arumugam, Shri R. S.
Dandeker, Shri N.
Deo, Shri P. K.
Deo, Shri R. R. Singh
Goyal, Shri Shri Chand
Gupta, Shri Kanwar lal
Kothari, Shri S. S.
Koushik, Shri K. M.
Lobo Prabhu, Shri
Mukerjee, Shrimati Sharda
Parmar, Shri Bhaljibhai
Pramanik, Shri J. N.
Raju, Dr. D. S.
Ranga, Shri
Sapre, Shrimati Tara
Sen, Shri P. G.
Sharma, Shri Beni Shanker
Sheo Narain, Shri
Somani, Shri N. K.

NOES

Babunath Singh, Shri
Bajpai, Shri Vidya Dhar
Barua, Shri R.
Basumatari, Shri
Bhagat, Shri B. R.
Bhakt Darshan, Shri
Bhandare, Shri R. D.
Bhattacharya, Shri C. K.
Brahmanandji, Shri Swami
Chanda, Shri Anil K.
Chandrakar, Shri Chandulal
Chandrika Prasad, Shri
Chatterji, Shri Krishna Kumar
Chaturvedi, Shri R. L.
Chavan, Shri D. R.
Chavan, Shri Y. B.
Choudhary, Shri Valmiki
Gandhi, Shrimati Indira
Ganesh, Shri K. R.
Ghosh, Shri Parimal
Jagjiwan Ram, Shri
Jha, Shri Shiva Chandra
Kapoor, Shri Lakhanlal
Karan Singh, Dr.
Kedar Nath Singh, Shri
Khanna, Shri P. K.
Kisku, Shri A. K.
Krishnan, Shri G. Y.
Krishnappa, Shri M. V.
Lashkar, Shri N. R.
Maharaj Singh, Shri
Mahida, Shri Narendra Singh
Marandi, Shri
Mishra, Shri G. S.

Nahata, Shri Amrit
Oraon, Shri Kartik
Pahadia, Shri Jagannath
Partap Singh, Shri
Parthasarathy, Shri P.
Patil, Shri Deorao
Pradhani, Shri K.
Prasad, Shri Y. A.
Raghu Ramaiah, Shri
Ram, Shri T.
Ram Dhan, Shri
Ramamurthi, Shri P.
Rana, Shri M. B.
Randhir Singh, Shri
Rao, Shri Jaganath
Rao, Shri Muthyal
Ray, Shri Rabi
Roy, Shri Bishwanath
Roy, Shrimati Uma
Sambhali, Shri Ishaq
Satya Narain Singh, Shri
Savitri, Shyam Shrimati
Sen, Shri Dwaipayan
Sethi, Shri P. C.
Shambhu Nath, Shri
Sharma, Shri Yogendra
Shashi Bhushan, Shri
Shastri, Shri Bishwanarayan
Shastri, Shri Ramanand
Shukla, Shiv Vidya Charan
Siddayya, Shri
Siddheshwar Prasad, Shri
Sinha, Shri Mudrika
Sinha, Shri R. K.
Snatak, Shri Nar Deo
Swarn Singh, Shri
Thakur, Shri P. R.
Tiwary, Shri D. N.
Uikey, Shri M. G.
Verma, Shri Balgovind
Virbhadra Singh, Shri
*Viswanatham, Shri Tenneti
Yadav, Shri Chandra Jeet
Yadav, Shri Jageshwar

MR. CHAIRMAN : The result** of the divisions is : Ayes : 19; Noes : 78.

The motion was negatived

Mr. CHAIRMAN : I will now put amendments Nos. 49, 50 and 51 of Shri Kanwarlal Gupta to the vote of the House.

Amendment Nos. 49 to 51 were put and negatived.

Mr. CHAIRMAN : I will now put amendment Nos. 64 and 65 of Shri Lobo Prabhu to the vote of the House.

Amendment Nos. 64 and 65 were put and negatived.

Mr. CHAIRMAN : I will now put amendment No. 92 of Shri Beni Shanker Sharma to the vote of the House.

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* Wrongly voted for NOES.

The following Members also recorded their votes.

AYES : Shri R. V. Naik, and Shri Tenneti Viswanatham;

NOES : Shri Jyotirmoy Basu.

Amendment No. 92 was put and negatived.

Mr. CHAIRMAN : I will now put amendment No. 107 & 108 of Shri Dandeker to the vote of the House.

Amendment Nos. 107 and 108 were put and negatived.

Mr. CHAIRMAN : I will now put amendment No. 118 by Shri Salve to the vote.

Amendment No. 118 was put and negatived.

MR. CHAIRMAN : Now I will put amendments Nos. 123 and 124 by Shri Tenneti Viswanatham to the vote of the House.

SHRI TENNETI VISWANATHAM : Amendment No. 124 may be put separately.

MR. CHAIRMAN : Then I will put amendment No. 123 to the vote of the House.

The Amendment No. 123 was put and negatived.

MR. CHAIRMAN: Now, I am putting amendment No. 124 to the vote of the House. The question is :

Page 15,—

after line 22, *insert*—

"Provided further that the provisions of this sub-section shall not apply in cases where the converted property or any part thereof has not been subject matter of a Partition—total or partial amongst the members of the family within five years from the date on which the individual converted his separate property into converted property except in *bona fide* cases :

Provided further that the provisions of this sub-section shall not apply to cases where the converted property consists of one residential house and its market value does not exceed rupees one lakh and the joint family consists of at least two male members." (124)

Those in favour may please say "Aye"

SOME HON. MEMBERS : Aye.

MR. CHAIRMAN : Those against may please say "No".

SEVERAL HON. MEMBERS : No.

MR. CHAIRMAN : I think, the "Noes" have it.

SHRI TENNETI VISWANATHAM : The "Ayes" have it.

MR. CHAIRMAN : All right; those who are in favour may please stand in their seats.

श्री शिवचंद्र झा : मैं इसका विरोध करता हूँ। जब डिविजन माँगा गया है तो डिविजन होना चाहिये और खड़े होने के के लिए नहीं कहा जाना चाहिये।

MR. CHAIRMAN : I can adopt any method.

श्री अटल बिहारी वाजपेयी : इस में क्या मुश्किल है। क्यों ख्वाम खाह का विवाद खड़ा कर रहे हैं।

SHRI TENNETI VISWANATHAN : You declared Amendment No. 123 as lost. I accepted the voice vote. I want division on Amendment No. 124.

MR. CHAIRMAN : I can adopt any of these methods. I requested the Members to stand in their seats.....

श्री शिवचंद्र झा : नहीं, आप नियमित ढंग से वोटिंग कराइये।

सभापति महोदय : यह कोई जरूरी नहीं है।

श्री अटलबिहारी वाजपेयी : फिर आप कहेंगे कि बेंच पर खड़े हो जाओ।

सभापति महोदय : रूल्ज में भी यह बात है। पेज 161 पर कहा गया है :

"Provided that, if in the opinion of the speaker, the Division is unnecessarily

claimed, he may ask the members who are for 'Aye' and those for 'No' respectively to rise in their places and, on account being taken, he may declare the determination of the House. In such a case, the names of the voters shall not ba recorded." This is also there. Do you want division on this Amendment No. 124.

SHRI TENNETI VISWANATHAM : Yes.

MR. CHAIRMAN : All right. Let the Lobbies be cleared..... Now the Lobbies have been cleared. The question is :

Page 15,—

after line 22, *insert*—

"Provided further that the provisions of the sub-section shall not apply in cases where the converted property or any part thereof has not been subject matter of a Partition—total or partial amongst the members of the family within five years from the date on which the individual converted his separate property into converted property except in *bona fide* cases :

Provided further that the provisions of this sub-section shall not apply to cases where the converted property consists of one residential house and its market value does not exceed rupees one lakh and the joint family consists of at least two male members.", (124)

The Lok Sabha divided :

Division No. 8] **AYES** [17.46 hrs.

Arumugam. Shri R. S.

Dandeker, Shri N.

Deo, Shri R. R. Singh

Goyal, Shri Shri Chand

Gupta, Shri Lakhan Lal

Kothari, Shri S. S.

Mukerjee, Shrimati Sharda

Naik, Shri R. V.

Parmar, Shri Bhaljibhai

Pramanik, Shri J. N.

Raju, Dr. D. S.

Ranga, Shri

Sen, Shri P. G.

Sheo Narain, Shri

Somani, Shri N. K.

Vajpayee, Shri Atal Bihari

Viswanatham, Shri Tenneti

NOES

Amjad Ali, Shri Sardar

Babunath Singh, Shri

Bajpai, Shri Vidya Dhar

Barua, Shri R.

Basu, Shri Jyotirmoy

Basumatari, Shri

Bhagat, Shri B. R.

Bhakt Darshan, Shri

Bhandare, Shri R. D.

Bhattacharyya, Shri C. K.

Brahmanandji, Shri Swami

Chanda, Shri Anil K.

Chandrika Prasad, Shri

Chandrakar, Shri Chandulal

Chatterji, Shri Krishna Kumar

Chaturvedi, Shri R. L.

Chavan, Shri D. R.

Chavan, Shri Y. B.

Choudhary, Shri Valmiki

Dwivedi, Shri Nageshwar

Gandhi, Shrimati Indira

Ganesh, Shri K. R.

Ghosh, Shri Parimal

Horo, Shri N. E.

Jagjiwan Ram, Shri

Jha, Shri Shiva Chandra

Kapoor, Shri Lakhan Lal

Karan Singh, Dr.

Kedar Nath Singh, Shri

Khanna, Shri P. K.

Kisku, Shri A. K.

Krishnan, Shri G. Y.

Laskar, Shri N. R.

Maharaj Singh, Shri

Mahida, Shri Narendra Singh

Marandi, Shri

Mishra, Shri G. S.

Mukne, Shri Yeshwantrao

Pahadia, Shri Jagannath

Partap Singh, Shri

Parthasarathy, Shri P.

Patil, Shri Deorao

Pradhani, Shri K.

Prasad, Shri Y. A.

Raghu Ramaiah, Shri

Ram, Shri T.

Ram Dhan, Shri

Ramamurti, Shri P.

Rana, Shri M. B.

Randhir Singh, Shri

Rao, Shri Jaganath

Rao, Shri Muthyal

Ray, Shri Rabi

Roy, Shri Bishwanath

Roy, Shri Chittaranjan

Roy, Shrimati Uma

Satya Narain Singh, Shri

Savitri Shyam, Shrimati

Sen, Shri Dwaipayan

Sharma, Shri Yogendra

Shashi Bhushan, Shri

Shastri, Shri Biswanarayan

Shastri, Shri Ramanand

Shukla, Shiv Vidya Charan

Siddayya, Shri

Siddheshwar Prasad, Shri

Sinha, Shri Mudrika

Sinha, Shri R. K.

Snatak, Shri Nar Deo

Swaran Singh, Shri

Thakur, Shri P. R.

Tiwary, Shri D. N.

Uikey, Shri M. G.

Verma, Shri Balgovind

Virbhadra Singh, Shri

Yadav, Shri Chandra Jeet

Yadav, Shri Jageshwar

MR. CHAIRMAN : The result* of the division is : Ayes : 17, Noes : 76.

The motion was negatived.

MR. CHAIRMAN : The question is :

"That Clause 16 stand part of the Bill."

The motion was adopted.

Clause 16 was added to the Bill.

17.45 hours

HALF-AN-HOUR DISCUSSION RE : IMPACT OF DRUGS (PRICES CONTROL) ORDER ON PRICES OF DRUGS

श्री कंवरलाल गुप्त (दिल्ली सदर) : सभापति महोदय, देश के हर एक नागरिक का यह अधिकार है कि उसको समय पर और उचित दाम पर दवाइयां मिलें, लेकिन दुर्भाग्य की बात है कि यह सरकार उस सम्बन्ध में पूर्णतया फेल हो गई है। आपको सुनकर आश्चर्य होगा कि पिछले सात सालों में दवाईयों की कीमत 40 प्रतिशत ज्यादा हो गई है और इसलिए सर्व-साधारण जनता के लिए दवाई हासिल करना कठिन हो गया है। टैरिफ कमीशन ने अगस्त, 1966 की अपनी रिपोर्ट में कहा कि 17 एसेंशल ड्रग्ज में 100 प्रतिशत से लेकर 300 प्रतिशत तक नफा है और उन का दाम कम होना चाहिए। मंत्री महोदय से मेरा पहला सवाल यह है कि आखिर वह इस रिपोर्ट के बारे में दो साल तक क्यों सोते रहे। उन्होंने दो साल के बाद निर्णय लिया। अगर सरकार समय पर काम करती, तो लगभग अस्सी करोड़ रुपये का फायदा सरकार और जनता को होता। सरकार ने वह रुपया मैनुफेक्चरर्ज की जेब में—और विशेषतया फारेन मैनुफैक्चरर्ज की जेब में – डाल दिया, क्योंकि उसने दवाइयों के दाम ठीक समय पर कम नहीं किये। यह एक क्लीयर एन्ड सिम्पल केस आफ बंगलिंग है।

सरकार ने जो ड्रग कंट्रोल आर्डर इस्यू किया, वह इतना एम्बिगुअस, काम्प्लीकेटिड और कनफ्यूजिंग था कि न सरकार को मालूम था कि क्या आर्डर दिया, न कैमिस्टस को मालूम था और न मैनुफेक्चरर्ज को मालूम था—कनज्यूमर्ज को मालूम होने का तो सवाल ही नहीं है। नतीजा यह हुआ कि हर रोज सरकार कोई न कोई क्लैरिफिकेशन और एमेंडमेंट जारी करती रही। पंद्रह दिन में इक्कीस बार इस आर्डर का एमेंडमेंट हुआ। इस तरह का कनफ्यूजन आज तक कभी नहीं हुआ है। सरकार ने यह आर्डर बगैर स्टडी करके जारी कर दिया, जिसका नतीजा यह हुआ कि कीमतें बहुत बढ़ गई। जिन दवाइयों की कीमतें कम की गई, वे मिलती नहीं हैं। नवलजीन और सैरिडान की कीमत 25 परसेंट बढ़ गई है। जो लैक्सेटिव की बोतल पहले 7 रुपये में मिलती थी, अब वह 27 रूपये की हो गई है। यह बात दिल्ली एडमिनिस्ट्रेशन

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*The following members also recorded their votes :

AYES : Shri Beni Shanker Sharma and Shrimati Tara Sapre

NOES : Sarwshri K. Hanumanthaiya and M. V. Krishnappa.