

[Shri Jyotirmoy Bosu]

There cannot be two types of auditing. There is only one type of auditing. You audit the books of accounts theoretically and you go in for physical check and verification. You have not said that.

Now the time has come when you must go for cost account auditing. That is the subject you have not dared to touch because then the whole structure will tumble down immediately, because you will be putting your hands in a bee-hive. As far as the superficial audit is concerned, the audit to which you have been accustomed, even in regard to that the structure is not sufficient.

I ask you a straight question. What about legislation? You have said quite frankly that you have no intention of bringing that Bill. I do really hope that in your reply to what has been said in this House you will support your attitude by reasons.

SHRI YESHWANTRAO CHAVAN : The hon. Member has made a speech which he could possibly have made even to the first reading stage. I had anticipated these arguments. Some other Members have advanced these arguments and I have replied to them.

As far as legislation is concerned I said that at the present moment there is no proposal before the Government to bring forward such a legislation. It does not mean, however, that Government would not change its mind or would not bring in legislation.

SHRI JYOTIRMOY BOSU : What is the reason?

SHRI YESHWANTRAO CHAVAN : We do not think it necessary at the moment. We do not legislate for the sake of legislation. We do so when it is likely to be of use. Otherwise there is no use of burdening the statute book with all types of legislation.

MR. CHAIRMAN : The question is :

"That the Bill be passed."

The motion was adopted.

17.44 hrs.

TAXATION LAWS (AMENDMENT) BILL

THE MINISTER OF FINANCE (SHRI YESHWANTRAO CHAVAN) : I move* :

"That the Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Gift-tax Act, 1958, be taken into consideration."

The Taxation Laws (Amendment) Bill, 1971 was introduced in this House on 12th August, 1971 and has thus been before the country for over 13 weeks. Hon. Members would no doubt have examined this Bill in detail and I, therefore, consider my task as fairly simple. With the indulgence of the House, I will avail of this opportunity to explain the rationale behind the proposals in the Bill and to touch upon some of its important features. Later, at the time of clause-by-clause consideration of the Bill I propose to move certain amendments in order to bring out the intention underlying some of the provisions more clearly and to remove certain deficiencies that have since come to my notice.

The practice of under-stating values of immovable properties in sale deeds has assumed alarming proportions in recent years. This enables the vender of the property to avoid his tax liability in respect of capital gains arising on sale and also to create a hoard of secret wealth for avoiding income-tax, wealth-tax, gift-tax and ultimately the estate duty liability as well. The unrecorded part of the price can be utilised for financing business or investments outside the books of account or for incurring lavish personal expenditure. The vendee, apart from avoiding stamp duty and municipal taxes, is able to utilise his money on which taxes have been evaded. The understatement of values of immovable properties in sale deeds thus operates as a powerful device for tax evasion with all its attendant evils. One of the main objects of the present Bill is to counter-act tax evasion through this device.

The Bill seeks to insert a new Chapter XXA in the Income tax Act with a view to empowering the Central Government to

*Moved with the recommendations of the President.

acquire any immovable property, including agricultural land, having a fair market value exceeding Rs. 75,000 where the sale price declared in sole deed is less than the fair market value of the property. It will be possible to invoke this power only in cases where there is reason to believe that the sale price as agreed to between the parties has not been truly stated in the sale deed with a view to facilitating the reduction or evasion of the tax liability of the transferor in respect of any income arising from the sale, or the concealment by the transferee of any income or any moneys which have not been or which ought to be disclosed for the purposes of income-tax or wealth-tax. In the Bill, the term "immovable property" has been defined to mean any building or land or any rights in any building or land and, as such, the provision will also apply in a case where leasehold or other rights in land or building are sold. With a view to bringing composite sales of buildings, machinery, plant, furniture, fittings or other things within the purview of the new provisions, I propose to move an amendment so as to provide that in a case where any building is sold together with machinery, plant, furniture, fittings or other things, such machinery, plant etc will also be regarded as immovable property. I further propose to clarify that the new provision will also cover the sale of a part of a building or a flat.

SHRI S. M. BANERJEE (Kanpur) :
Including No. 7 Jantar Mantar Road ?

SHRI YESHWANTRAO CHAVAN : The power to initiate proceedings for acquisition of such property under the new provisions will be vested in the Assistant Commissioner of Income-tax who, for this purpose, will be designated as the competent authority. The proceedings for such acquisition will be initiated by the competent authority within six months from the date on which he receives information about the registration of the sale deed from the Registrar of Assurances or the transferee, whichever is earlier. The transferor and the transferee of the property, as also any person interested in it, will be entitled to file objections to the proposed acquisition. Under the Bill, such objections can be filed within a period of 30 days of the publication of the notice of such acquisition in the Official Gazette. I, however, propose to extend this period by another 15 days. Where any objections are filed, the competent authority will be required to consider such objections and also to give a

hearing to the parties concerned before coming to a decision. If, after considering the objections and hearing the parties, the competent authority is satisfied that the immovable property in question is of a fair market value exceeding Rs. 25,000 ; that such property has been sold for an apparent consideration which is less than its fair market value and that the consideration for such sale, as agreed to between the parties, has not been fully stated in the sale deed with the object of facilitating tax evasion by the transferor or the transferee, the competent authority would have the power to order the acquisition of the property. Under a special rule of evidence it has been provided that where the property is sold for an apparent consideration which is less than its fair market value, it shall be presumed, unless the contrary is proved, that the consideration for such sale as agreed to between the parties has not been truly stated in the sale deed with the object of facilitating tax evasion by the transferor or the transferee. In order to make the provision more effective, I propose to move an amendment so as to provide that where the fair market value of a property exceeds the apparent consideration by more than 25 per cent of such apparent consideration, it shall, in all cases, be presumed that the sale price has not been truly stated in the sale deed. In other words, in such cases, the first part of the presumption relating to the intention to facilitate tax evasion will, however, continue to be rebuttable in all cases.

No order of acquisition will be made except with the prior approval of the Commissioner of Income-tax. An appeal from the order of acquisition will lie to the Central Board of Direct Taxes, who will be required to decide the appeal after giving a hearing to the parties concerned. The order of acquisition will become final on the disposal of the appeal by the Board confirming the order of the competent authority. Thereupon, the competent authority will call upon the owner or the person who is in possession of the property to surrender or deliver possession thereof to the competent authority. When the possession of the property is delivered to the competent authority ; the property shall vest in the Central Government free from all encumbrances.

The compensation for property acquired under the Bill will be a sum equal to the consideration stated in the sale deed plus 15

[Shri Yeshwant Rao Chavan]

per cent of such sum. Where any improvements are made to the property between the date of transfer of the property to the transferee and the date of publication of the notice of acquisition in the Official Gazette, the amount of the compensation will be increased by an appropriate sum to cover such improvements. Conversely, if, after the transfer of the property to the transferee and before the vesting of the property in the Central Government, the property is damaged otherwise than as a result of normal wear and tear, the compensation payable will be reduced by an appropriate amount. In case of dispute regarding the cost of improvements or the cost of restoring the damaged property to its original condition, the competent authority will be required to refer the matter for determination by a civil court. It is also being provided that in a case where the amount of compensation is not paid within 30 days of the vesting of the property in the Central Government, Government will pay simple interest at the rate of 9 per cent per annum for the period of delay. As the amount of compensation payable under the Bill would be less than the compensation which would have been payable if the property had been acquired under the Land Acquisition Act, 1894, it is being specifically provided that the short-fall would be deemed to have been realised by the Central Government as penalty from the transferee for being a party to the transfer which has, as its object, the facilitating of tax evasion by the transferor or the transferee. Further, no penalty will be levied under the Income-tax Act on the transferee for concealing his income which is utilised by him for paying any amount in excess of the apparent consideration, even though such amount may be assessed to tax as his income. Similarly, no penalty will be levied on the transferee under the Wealth tax Act for concealing any assets which are utilised by him for paying such excess consideration, even though such assets may be assessed to wealth-tax in his hands.

As the new provisions are relatable to Entry 42 of the Concurrent List in the Seventh Schedule to the Constitution, namely, "Acquisition and requisitioning of property" and as the said Entry does not apply to the State of Jammu and Kashmir, it is being provided that the provisions of the new

Chapter XXA shall not apply in respect of immovable property situated in that State.

The Bill also contains certain provisions to improve the present arrangements for valuation of buildings, lands and other assets for purposes of income-tax, wealth-tax and gift-tax. It is proposed to augment the administrative set-up of the official valuation machinery and to confer adequate powers on it, as also to bring about better regulation and discipline over non-official valuers.

For this purpose, the Valuation Department at present functioning on a limited scale under the Central Board of Direct Taxes will be augmented by appointment of Regional Valuation Officers, corresponding in status and emoluments to Commissioners of Income-tax; District Valuation Officers corresponding in status and emoluments to Assistant Commissioners of Income-tax; Valuation Officers in the grade of Executive Engineers and Assistant Valuation Officers in the grade of Assistant Executive Engineers, Class I. The Valuation Officer, which term will include Regional Valuation Officer, District Valuation Officer and Assistant Valuation Officer, will be associated with the valuation of assets at the stage of assessment to wealth-tax. For this purpose, the Wealth-tax Officer will be able to refer the matter of valuation of any asset to the Valuation Officer. The latter will thereupon proceed to deal with the matter and for this purpose, he will give an opportunity to the taxpayer to represent his case. The valuation will thereafter be finalised by the Valuation Officer after considering the taxpayer's objections and other evidence. The valuation as made by the Valuation Officer will be binding on Wealth-tax Officer who will make the assessment in conformity with such valuation. At the stage of appeal before the Appellate Assistant Commissioner, the question of valuation, if disputed, will be decided by him after giving a hearing to the Valuation Officer who made the valuation. A similar procedure will also be followed at the stage of appeal to the Appellate Tribunal if the valuation of any asset is disputed in appeal either by the taxpayer or by the Wealth-tax Officer. In other words, the Appellate Tribunal will be required to hear the parties and give its decision on the question of valuation instead of being bound by the opinion of arbitrators as under the existing law. The existing procedure for the arbitration of the valuation of any asset by two

non-official valuers or by a third valuer nominated by the Tribunal at the stage of appeal to the Tribunal is being discontinued.

In proceedings before the Wealth-tax authorities and the Appellate Tribunal, where the valuation of any asset is in dispute, the taxpayer will have the right to be assisted by a registered valuer *i.e.* a non-official valuer who is registered with the Central Board of Direct Taxes. The qualifications and experience required for such registration will be laid down in the Wealth-tax Rules. Any person who desires to be registered as a valuer under these provisions will have to make an application to the Board and also undertake to make an impartial and true valuation of any asset which he may be required to value ; to furnish a report of such valuation in a form to be prescribed for the purpose ; to charge fees at rates not exceeding the rates to be prescribed and, lastly, not to undertake valuation of any asset in which he has a direct or indirect interest. A similar declaration will be required to be furnished with every report of valuation. Any false declaration in this behalf will entail prosecution of the valuer leading to award of imprisonment up to six months or fine. The Board will have the power to remove any person from the register of valuers if such person is convicted of any offence or sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity.

The relevant provisions in the Income-tax Act and the Gift-tax Act are also being amended so as to make the new procedure of valuation of assets by the Valuation Officer at the stage of assessment applicable for purposes of these Acts as well. Similarly, the present procedure of arbitration of the valuation of any asset by two non-official valuers or a third valuer at the stage of appeal to the Appellate Tribunal for purposes of income-tax and gift-tax is also being discontinued.

With a view to discouraging *benami* holdings of property, the Bill proposes to introduce a new provision in the Income-tax Act so as to debar a person from enforcing his claim to any property held for him *benami* by another person, unless the claimant has disclosed the income from the property in a return of income or the property

itself in a return of net wealth furnished by him. If he has done neither of these, he may give notice to the Income-tax Officer of his claim to the property and thereupon the bar will cease to operate. The bar to enforce claims to property held *benami* will not, however, apply to any suit of a value not exceeding Rs. 2,000 which is tried by a Court of Small Causes or other similar court.

As hon. Members would have seen, the main purpose of the Bill is to curb evasion of income-tax and other Central direct taxes. The evil of tax evasion has assumed menacing proportions and I feel that radical measures are needed for its eradication. The present Bill represents an important step in combating tax evasion and I hope it will receive the unanimous approval of the House.

Sir, I move that the Bill be taken into consideration.

SHRI SEZHIYAN (Kumbakonam) : Sir, I have given notice of a motion to refer this Bill to a select committee.

MR. CHAIRMAN : It has not come in time. But, as a special case, I am allowing it to be moved.

18 hrs.

SHRI SEZHIYAN : Sir, I move :—

“That the Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Gift-tax Act, 1958, be referred to Select Committee consisting of 15 members, namely, Shri Bhagwat Jha Azad, Shri Jyotirmoy Bosu, Shri Y. B. Chavan, Shri P. K. Deo, Shri C. C. Desai, Shri K. R. Ganesh, Shri K. Gopal, Shri H. N. Mukerjee, Shri B. S. Murthy, Shri Amrit Nahata, Dr. Laxminarayan Pandeya, Shri Ramsahai Pandey, Shri N. K. P. Salve, Shri S. C. Samanta ; and Shri Era Sezhiyan with instructions to report by the first day of the next session.” (1)

Sir, the present Bill under discussion is a very important measure.

SHRI YESHWANTRAO CHAVAN : 18.01 hrs

He can continue tomorrow.

*The Lok Sabha then adjourned till
Eleven of the Clock on Tuesday,
November 16, 1971, Kartika 25,
1893 (Saka).*

MR CHAIRMAN : He can continue
tomorrow.

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