

**SHRI SURENDRA MOHANTY** (Kendrapara) : The motion on the Report of the Linguistic Minorities Commissioner has been sprung on us as a surprise. Its discussion may be put off till tomorrow.

**MR. SPEAKER** : Naturally it will go to tomorrow, because the Taxation Laws (Amendment) Bill is under consideration. We shall adjourn for lunch.

**SHRI ATAL BIHARI VAJPAYEE** (Gwalior) : Till 2:20.

**MR. SPEAKER** : It should be 2:15 or 2:30 because we go by quarter. We shall re-assemble at 2:15. Mr. Sezhiyan will continue his speech.

13.20 hrs.

*The Lok Sabha adjourned for Lunch till Fifteen minutes past Fourteen of the Clock.*

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

[**MR. DEPUTY-SPEAKER** in the Chair]

### TAXATION LAWS (AMENDMENT) BILL—Contd.

**SHRI JYOTIRMOY BOSU** (Diamond Harbour) : Sir, I want to make a reference for your record to the effect that in Durgapur a headmaster was burnt alive by Chhatra Parishad boys by spraying petrol in a room in the school. It is a very serious matter. May, I, through you, request the Government to inquire into the matter and make a statement ?

**SHRI PRIYA RANJAN DAS MUNSI** (Calcutta South) : There is no Chhatra Parishad Unit in Durgapur. It is baseless. He was burnt by some extremist people. They have an inter-party clash and they have done it.

**SHRI JYOTIRMOY BOSU** : I stand by what I have said.....(Interruption)\*\*

\*\*Not recorded.

**MR. DEPUTY-SPEAKER** : Order, order. Nothing will go on record.

**SHRI SEZHIYAN** (Kumbakonam) : Mr. Deputy Speaker, Sir, I have moved for reference of this Bill to a Select Committee.

**THE MINISTER OF FINANCE** (**SHRI YESHWANTRAO CHAVAN**) : I am suggesting another motion.

**SHRI SEZHIYAN** : I am not insisting on the names that I have already given. He can increase the number or he can choose the best personnel available here and get the job done. My only anxiety is that it should go to the Select Committee because it is a very important measure.

It has been the convention of this House to send important Bills of this nature to a Select Committee to avoid any deficiency in drafting and in the things that should really go into the Bill. Though the intention has been laudable, it has not come out very well in the Bill.

This Bill has been piloted here for consideration on three important aspects : firstly, to counter evasion of tax in property dealings; to curb *Benami* holdings; and to improve arrangements for valuation. In all the three things the Bill is incomplete. The provisions now incorporated are insufficient to achieve these. Some of the provisions of the present Bill, I am afraid, may be struck down by courts. On all the three grounds it fails.

Taking the first objective, namely, to counter evasion of tax in property dealings, I refer to the report of the Working Group of the Administrative Reforms Commission where they have enumerated avenues of utilisation of evaded tax money. There are as many as 14 items enumerated on page III of the Working Group's report, out of which only item No. 7, payment of money towards purchase of land and house property, has been tackled. What happened to the rest 13 items I do not know. Therefore, to that extent it is incomplete.

Curbing of *benami* holdings also has been referred to by the Working Group of the Administrative Reforms Commission. They have dealt with two types of *benami* transactions. The present Bill tackles only one type. The second type of *benami* transaction is not covered by the present Bill. Therefore, on that score also it has not come up to expectations.

Then, there was a special committee, the Wanchoo Committee, to go into the specific question of evasion of taxes and how to deal with that. This morning the hon. Minister was kind enough to inform the House that the Wanchoo Committee had given its report. I am not aware whether the Wanchoo Committee's report has been made public. The Members of Parliament are not aware of the contents of that one. I do not know whether they have given the final report. Probably, an interim report may have been given.

My point is this. This is a Bill which specifically deals with evasion of taxes and how to curb down the evasion. Why not wait till the final report of the Wanchoo Committee comes and have the benefit of it? Somebody may suggest that we can bring in other legislation to give effect fully to the Wanchoo Committee Report. Therein, I differ from them.

There is a specific recommendation or an observation made by the Working Group of the A.R.C. in regard to the question of taxation amendment laws. Chapter V deals with needless complexities in the tax laws and suggestions for removing them. They have said about the need for restraint in moving amendments to Income-Tax Act. They have given very good suggestions. They have said that from 1944 to 1966, there have been a spate of amendments. The then Finance Minister wanted to put in some stability in the Income-Tax Act and, therefore, in 1961, the law was amended and brought up-to-date with the hope to avoid future amendments.

An assurance was given on the floor of the House itself by the then Finance Minister that the state of stability had reached and that, so far as the Income-Tax Act is

concerned, at least for five years, no amendment would be called for. What happened then? From 1961 to 1966, during the five years period which was assured by the then Finance Minister as the period of stability, as many as 400 effective amendments were put into the Income-Tax law. This exceeds the number of amendments put in from 1944 to 1961. From 1966 till to-date, at least about 200 more amendments have been put in. So, at least 600 amendments have come in after a stable Income-Tax law was introduced.

This is what the Working Group of the A.R.C. has suggested. They have said :

"The first step in removing complexity, therefore, is to cry halt to further amendments at least for a period of five years. When, in future, any amendment is proposed to the Income-Tax Act, it should be done only after careful survey of the total effect of the amendment and after considering carefully the need for carrying out the amendment. No amendment should be proposed merely to get round an adverse decision of the Supreme Court or the High Court. Further, whenever amendments are considered necessary, they should not be proposed through the Finance Bill because a Finance Bill is not referred to the Select Committee and the Members of Parliament do not have adequate opportunity of studying the various provisions. All amendments in future, it is suggested, should be carried only through a separate Direct Taxes Amending Bill."

Why they suggested this thing was that they wanted, whenever income-tax law is amended, it should be done through a separate Bill and referred to the Select Committee where it will get a closer and better attention of the Members. Not only of the Members. They have suggested as follows :

"Likewise, before rules are amended or framed, it should be done only after ascertaining the need for amendment from all the Commissioners of Income-Tax and after eliciting the views of leading professional and trade bodies.

[Shri Sezhiyan]

such as, the Institute of Chartered Accountants, the Federation of Chamber of Commerce and Industry and the Associated Chambers of Commerce."

Therefore, they wanted to take the opinion of all these bodies.

The haste with which this Bill has come before the House, as I said, is such that it is very inadequate and it is very insufficient to deal with the purpose even in a limited way for which it is intended; further I am afraid, some provisions of it may be struck down by the court if they are passed in the present form.

Only one or two things more I would stress because I feel that this Bill should, without fail, go to the Select Committee. I will just refer to them just in illustration without going into the merits of the individual clauses.

If you take clause 4, Definitions—269A, there it is said :

"transfer", in relation to any immovable property, means transfer of such property by way of sale. But a property can be transferred not only by sale, it may be transferred by exchange also. Exchange of property is a very important factor to be taken into consideration because there will be some very big house which may have a property worth Rs. 5 lakhs. It may be transferred for about 50% of the value by exchange plus unaccounted money. Then it will not be covered because it is not a sale. There are Supreme Court judgments which said that exchange is not covered by sale. Even if you take the Registration Act, there also exchange is dealt with separately. That means this definition gives way to easy evasion of transfer of properties by exchange. Exchange of property also can be done for some purpose for which it can be under-assessed. It can be under-sold. That mischief is not being rooted out by the definition that is given now.

Then, if you take the second definition, viz., "fair market value", it is said :

"fair market value", in relation to any immovable property transferred, means the price that the immovable property would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer of such property.

This is quite correct. This has been lifted bodily from 2 (22A) of the Income Tax Act. But there are two sub-clauses there. They have taken only one sub-clause and the other sub-clause they have omitted. The fair market value is the value that the property would ordinarily fetch by sale. Suppose, if there is no open market in the place, it may be a very remote village and there is only one big house there. Will you conduct an auction and sell it? How will you assess it? In this case, the Income Tax Act has given an alternative. I don't know why they have omitted to take that one. If you take 2 (22A), 'fair market value' is being explained as the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date. There is another sub-clause, Cl (ii) which says that "where the price referred to in sub-clause 1 is not ascertainable, it may be such price as may be determined according to the rules thereunder." They have lifted only a part of the definition, and the second they have omitted. Tomorrow one may go to the court and challenge that there is no open market value for this and question under what provisions of the law you have fixed the price. So, this provision should have been included there.

Then there is another clause which is going to be the most mischievous clause in the whole of this Bill—amendment of 296C, page 3. There we are dealing with immovable property in respect of which proceedings for acquisition may be taken. That is the linch-pin in the entire Bill. If there is any under-assessment, then the Government is at liberty to acquire that property. How do you say that it is under-assessed? It is not well-defined in this clause. It says :

"Where the competent authority has reason to believe that any immovable

property of a fair market value exceeding twenty-five thousand rupees has been transferred by a person... to another person... for an apparent consideration which is less than the fair market value of the property..."

'Which is less than the fair market value'—suppose the property is worth Rs. 5 lakhs and if the assessee says that it is worth Rs. 4,99,999, still it can be brought under the mischief of this clause. There is no margin put here at this stage. Yesterday you said about 25%. It comes at a later stage, at the stage of starting the proceedings for acquisition of the property. At that time, if the income tax officer feels that if a property worth Rs. 5 lakhs has been assessed by the assessee as Rs. 4,99,900, still he can take action. It does not bar him.

You will find that clause 52 dealing with capital gains gives a better definition. I do not know why they do not use these words. There it has been said very clearly. It says, "without prejudice to the provision of this subsection, if in the opinion of the Income-tax officer, the fair market value and the capital assets transferred by the assessee as on date of transfer exceed the fair value of the consideration declared by the assessee in respect of the transfer of such capital assets by an amount of 15 per cent." Only when it exceeds 15 per cent, this will apply. The same thing should have been put here. So, in respect of all these things, to start acquisition proceedings, no guidance is given. And also "from person to person," this has not been defined. Whether both the persons would be assessable has not been brought in very clearly. If only one has to be assessed, what about the other? That also has not been brought out very clearly. I don't want to go into the details. But I wish to refer to Clause 8—A where it is stated that it shall be presumed unless the contrary is proved. That means, the presumption lies with the Income-tax officer and the negative has to be proved by the assessee concerned. So, the onus of the proof of the negative rests on the assessee. I do not know whether this will stand the test of the court because it will be difficult,

unless you have your own assessments, which will stand the test of the court, by the competent authority.

**SHRI YESHWANTRAO CHAVAN :**

If you do not have the presumption, you better not have the Act at all.

**SHRI SEZHIAN :** My feeling is this. Why cannot we put it in an effective way? I am not objecting to your basic principles. It should be but in a better way that should stand the test of the Court. That is the only thing. There is a property worth Rs. 5 lakhs, under-assessed as Rs. 3 lakhs. As per the provision in the Bill it can be acquired by the Government for Rs. 3,45,000, that is 15 per cent more than the declared value. It comes to Rs. 3.45 lakhs. I want to know whether it will stand the test of the Court, because it may come into contradiction with Art. 31 (2) of the Constitution in its present form.

**SHRI JAGANNATHRAO JOSHI** (Shajapur) : They are going to amend.

**SHRI SEZHIAN :** You amend it. It will be a safer thing. Nowhere in the Bill a provision has been made for reassessment in respect of an assessee who has given no particulars. Nowhere in the Bill such a provision is there either in respect of the transferor or the transferee. Suppose property worth Rs. 5 lakhs is to be sold for somebody for Rs. 3 lakhs, nowhere in the Bill a provision is made that the income or wealth of the transferor should be reassessed. Suppose Rs. 5 lakhs worth of property is sold by party A to party B. Party B is in possession of that property. It is shown in the books as Rs. 3 lakhs. You are going to take it at Rs. 3.45 lakhs, from B. What about the assessment of A? Nowhere in the Bill a provision is made for re-assessment.

I am afraid whether Rs. 5 crores of the Revolving Fund is enough because out of that Rs. 4 crores goes for other things. Only Rs. 1 crore is left for implementing provisions of this kind. You may take the case of Bombay. Even if you analyse two or three cases, the amount involved under this Bill will exceed Rs. 1 crore.

**SHRI JYOTIRMOY BOSU :** Mr. Chavan knows it very well.

**SHRI SEZHIYAN :** I do not now why no provision is made in this Bill about such properties which are being acquired. How do Government propose to maintain them? I would like to know whether the CPWD will maintain them, or else which other agency would maintain them. If there are any tenants, how are they going to be evicted from those houses? Nothing has been thought of in this Bill in regard to these matters. At least in the rules, Government should be careful to provide for all these things.

Again, the qualifications for the valuation officers have not been laid down. If we see the financial memorandum, we find that mention has been made there of the fact that the valuation officers would correspond to senior income-tax officers, class I. But the report of the Administrative Reforms Commission clearly lays down that the valuation officers should be fully qualified technical persons and they should be employed by the Department. But in the Bill we find that no qualifications have been laid down for valuation officers, and the income-tax officers themselves become the valuation officers, which is very much against the spirit of the A. R. C. recommendation.

So, this Bill bristles with many lacunae and loopholes and they should be closely and carefully scrutinised by a Select Committee which can be chosen by the hon. Minister. I am at one with him that this Bill should be put on the statute-book. I wholly support the objectives of this Bill. My only and sincere wish is that it should be put in a better form and in a stronger position so that there is no loophole and there is no element of arbitrariness or discretion given so that tomorrow we shall not receive complaints of corruption and arbitrary exercise of discretion etc. To that extent, we should try to improve the Bill.

**SHRI N. K. P. SALVE (Betul) :** So far as the principles underlying the contemplated legislative measure are

concerned, there is no doubt that they are very highly commendable and very highly laudable. I have no doubt in my mind that Government will receive support from all sections of the House, primarily because the measure indicates an awareness on the part of Government, though belatedly, and at long last, to become vigilant and watchful in respect of transactions in immovable property which transactions all these years have caused tremendous havoc on account of the possibilities of tax evasion, and have been transactions most cherished and most attractive for purposes of investment of black money earned out of tax evasion.

It is a very well known phenomenon, and I am sure that more than anyone else in the House, the Finance Minister would be aware of it, because he ruled supreme over Bombay for years and he knows things about Bombay so well, that immovable properties in our country have been the most attractive and massive absorbent of black money. In this Bill it is realised in principle—as regards the form, I shall comment a little later—that such untrammelled dealings in black money be stifled or checked to a substantial degree. I do hope that that is the intention, particularly in view of what the Finance Minister has stated in the Bill, that this inflow of coloured money into this highly attractive absorbent of black money should not be so easily possible after we enact this measure in the proper form.

However, I have to agree with the Member from the DMK who said that this Bill should go to Select Committee. Because it was so clumsily and hastily drafted that I am afraid that the whole measure in its present form instead of implementing the objective of the Bill will in fact impede the attainment of that objective. As I shall point out presently, the Bill is full of loopholes and out of one thousand cases, hardly one case will be caught in the net. It is my very grave apprehension that that one case will be the case of an honest man, and 999 crooks will get out of the net. Further the way this measure is drafted so hastily and clumsily, it will open flood-gates of litigation and in fact it will just lead to floods without any gates, and will only help expand the paradise of the

legal profession. Therefore, I do support what Shri Sezhiyan has said about presenting this Bill in a proper form. It should be very skilfully and artistically drafted so that we do achieve the objective which the Finance Minister and the whole House has in mind.

**SHRI YESHWANTRAO CHAVAN :** I do not know how artistic it has to be.

**SHRI N. K. P. SALVE :** Human ingenuity can work both ways. The more skilful and more artistic we are here in Parliament, the more ingenious and artistic the lawyers will be in the courts to defend their clients. But that is no reason why we should be crude or bereft of proper appreciation and understanding of our faults in drafting and get rid of what look like palpable defects and deficiencies. I have no doubt that when I point the same to the Finance Minister he will accept that the whole form of the Bill needs to be changed.

My first very serious objection is : how does this Bill get at those transactions where without a "transfer" of immoveable property there is investment of black money in immoveable property ? Today the most cherished occupation of a successful tax evader is to amass as much unofficial money as he can and purchase immoveable property, by investing substantial moneys on which he has not paid tax in false properties and thereafter go on to deal with these immoveable properties in such a way without effecting transfer that he enjoys with impunity the rewards of tax evasion. This measure in its existing form does not hit at any transaction in which black money is invested in immoveable property unless a transfer takes place.

I heard the Finance Minister very attentively this morning when he was replying to a call attention notice on the rising price spiral. He said—and I have no doubt in my mind that he meant it—that he is very anxious to take stern and effective measures to curb tax evasion. He further said this afternoon that we are enacting a measure by which people will not be able to invest their black money in immoveable properties. I would ask of him whether he has made any provision in this Bill where a man who is investing in immoveable properties, his black money will in any way be

impeded, stifled or stultified from investing the same. This is my first serious objection to the proposed legislation. This law must take in, and in a special category, taxation of investment of black money on the basis of the difference between the construction cost and the fair market value even without transfer. After all, why should a man be penalised only when he transfers and not a man who invests black money in that transfer. The taxation should be at the investment stage. The existing section 69 relating to tax on unexplained investment is extremely inadequate for such taxation. Nothing comes out of that. Even in a case where a person constructs a house at an apparent cost of a lakh of rupees or two but for purposes of wealth tax the value is taken at Rs. 5 lakhs, this Bill can do nothing to him. Why not, therefore, make a provision that that Rs. 4 lakhs will be brought to tax whether he has transferred or not ? The difference between construction cost and fair market value also must provide basis for compulsory inquiry and action for taxation of black money invested in immoveable properties unless the variation is due to appreciation in the value of property over years.

I come to second serious objection. Concealment of tax through investment in immoveable properties is very widely prevalent in the affluent sections of the society. It is there in respect of other transactions and properties also unrelated to immoveable properties, but much more so in the case of immoveable properties. In fact, without black money you cannot acquire immoveable property. I know of a retired Chief Justice now settled in Nagpur, who told me that on retirement he wanted to invest money in Bombay with a co-operative society for a flat. He could not make the investment and could not buy the flat because he did not have 40 per cent of black money to invest. I shall be willing to divulge the name to the Finance Minister if he is interested in knowing who it was. Does this Bill take into account the large scale malpractices through and via the housing co-operatives not of the labourers or the common people but of the affluent section of society in large cities and specially Bombay ? Millions of thousands unaccounted rupees are put into these properties, large and palatial buildings construc-

[Shri N. K. P. Salve]

ted and then brought into the co-operative societies. And these transactions today do not come in for any punitive measure. They will never come for any deterrent measure even tomorrow under the law. They will never come in under any acquisition proceedings under this law. Are we going to leave the dishonest rich and affluent free just because they are operating via co-operatives and come heavily only on the unsuspecting unwary citizen who cannot afford expensive legal advice on taxation? I have no doubt in my mind that the Finance Minister is aware that the scheme of co-operative housing in Bombay by the affluent section is one of the biggest bodies of racketeers and profiteers. These activities are completely left out because that transfer will not be brought within the gamut of the provisions of this measure.

The next objection I have is about the scheme of the measure for initiation of acquisition proceedings. I have gone through the Bill, not at great length but hurriedly and I shall endeavour to point out to the Finance Minister what to me look palpable and glaring inadequacies so that he could agree to the suggestion of Mr. Sezhiyan to send it to the Select Committee and would realise the need to give sufficient time. Seeing the importance of the measure, we have to do a thorough job. Let us not make laws after laws and then go on making amendments after amendments, let us not have a series of new taxation laws where we have larger new loopholes than measures to plug old ones.

I shall first point out the grave and extremely perilous procedure contemplated under 269 (C) for vesting jurisdiction in the competent authority to initiate proceedings. *Prima facie* it is contemplated that three conditions must pre-exist before the competent authority can assume jurisdiction to initiate proceedings. Finally whether it is to be acquired or not, is a different story. Even for initiating proceedings three conditions must exist. Firstly, the property should be above Rs. 25,000. There should be no difficulty about this condition. The second condition is that there should be variation in the apparent consideration and the fair market value of the property. Possibly, in this also there may not be much difficulty because the apparent consideration mentioned in the con-

veyance deed and the fair market value are something which can be ascertained through wealth tax assessments, records etc or other evidence such as the valuation of similar properties situated next to this property. That may not present much difficulty.

The real difficulty is with regard to the third pre-condition contained in sub-clauses (a) and (b) of 269C. The competent authority could initiate proceedings when he has reason to believe and when called upon will have to prove *prima facie* that as a result of transaction there is reduction or evasion of the liability to pay tax of the transfer or that the transfer facilitates concealment of any income or any moneys or other assets assessable under Income-tax Act or Wealth Tax Act of the assessee and that this reduction of tax liability, evasion or concealment even if factually found were premeditated and were outcome of a deliberate artifice.

In other words the burden of proof has been cast on the competent authority before he can assume jurisdiction to initiate the proceedings, *prima facie* to establish existence of a plan and its nexus with tax evasion. The law is far too well established on this point. There are also two leading cases on this point. There are similar provisions in the Income-Tax Act where the burden has been cast on the department to prove that a particular transaction has been gone into as an artifice or as a device to evade tax. If in reality there is reduction of tax liability, if there is evasion of tax, that does not matter. The conspiracy to evade tax must be proved by the department before the proceedings are initiated. The two leading cases I have in mind are : Sakarlal Balabhai reported in 1968 (69) ITR 186 and the second case, Mohd. Ibrahim Sahib reported in 1962 (45) ITR 168.

I hope the hon. Minister will look into the ratio of these two cases which have laid down *inter alia*, that the avoidance of tax must be intended to be achieved by the assessee in entering into the transaction. It must be a deliberate act with a set purpose. How impossible and how difficult it is to prove that this was the purpose in transferring the property can be imagined. The factual reduction in liability by itself is not sufficient

justification to assume jurisdiction to initiate the proceedings. I submit that we are making this law unnecessarily cumbersome. Ultimately you may not acquire it unless you are satisfied on these two points. That is in fact contemplated in another section. But for the purposes of initiation of proceedings, straightaway it must be provided that the moment you find that there is a variation between the apparent consideration and the fair market value, there prima facie justification in vesting the jurisdiction in the competent authority to go ahead with further proceedings, which will enable untrammelled enquiry.

Secondly, Mr. Sezhiyan referred to section 52 and said that the terminology employed in that section was more precise, more accurate, that that should be superimposed in this section. I am however, on a different question that is of much greater and vital importance, connected with section 52, and it is this. The fact seems to have completely escaped the attention and notice of the framers of this Bill that section 52(2) of the Income-Tax Act contemplates taxation, by a fiction, of income which might represent the difference between the apparent consideration mentioned in a conveyance and what might be its market value for purpose of taxation of capital gains. In other words, the difference can be brought to tax by a fiction, even if the transferor has apparently not received the money representing full market value of property. Therefore, the income-tax officer has sufficient powers to tax the income even if sought to be evaded in a particular transfer of immovable property as it is. Thus section 52(2) operates in the same field and applies to same transfers and transactions as the present chapter under consideration. Tomorrow, when proceedings are initiated for acquisition of a property, it will be the right of the assessee to say that there is no question of reduction of tax liability because the Income-tax officer can always tax him under section 52(2). It is a well accepted principle of taxation law that when there are two provisions of law applicable to a transaction, the provision which leaves the assessee with lesser burden will only apply and not the other. All these facts have not been looked into by the draftsmen.

This Bill typifies our attitude towards taxation laws. We have made a massive 700 amendments in the last few years and I do not know how many more hundred amendments we will make. It is very laudable objective, but why can we not devote more time to go into this. It is much better that we have a skilful drafting rather the rush through these matters the way we are trying to do. Because if my apprehensions are justified then section 52(2) and this new Chapter XX A may operate in the same field in respect of the same transaction, then the whole measure may become a dead letter. And how long are we going to blame ourselves for not curbing tax evasion when we ourselves make laws in which we leave a tremendously large amount of loopholes; tremendous scope for litigation, Therefore, it is very necessary to have a careful look into the matter.

Another point Shri Sezhiyan made was about the limited scope of the term "transfer", that exchange is not transfer. Maybe that is correct, but I know of a case which is reported in 1957 (32) ITR 190 Supreme Court, which has in terms stated that relinquishment of a right or extinguishment of a right is not transfer. In fact, this case arose under the capital gains provision. A company redeemed its preference shares and the Income-tax Officer tried to tax the capital gains on the same. The same was resisted on the plea that there was no transfer of the preference shares because they were not transferred to anybody. Only the right came to an end, the rights were extinguished. The Supreme Court held that capital gains could only be levied on transfer of assets, not on extinguishment of a right or relinquishment of a right. Accordingly, in 1956 the law was amended. But even then we are not wise about that in this Bill. This is how we are proceeding with our fiscal legislation one after the other. When the Supreme Court in a case held that for purposes of transfer you have to artificially expand the scope of the term transfer by a fiction created in the definition section to include extinguishment or relinquishment of a right if so desired and we have amended the law accordingly in respect of capital gains, still we are not worried about doing the same here in this Bill.



15:00 hrs.

In fact, without charging any fees, I can suggest a very easy way out. I create a tenancy in common in an immovable property with A, B and C. My interest and their interest remain in common tenancy. I do not define what is the interest of each. The property is valued at say Rs. 3 lakhs. I tell ABC, "You give me Rs. 1 lakh white, two lakhs black and four of us will become tenants in common". I will thereafter make a document and relinquish my right. The transaction will be completely outside the purview of this Bill. I would like to have this particular illustration examined by any competent person who understands taxation laws and see whether this sort of large scale avoidance is possible or not. Many such loopholes are likely to be there.

While I agree that no mercy has to be shown to anybody who earns and invests successfully black money and indulge in transactions in immovable properties to evade taxes, the provision regarding appeals causes to me the greatest concern. Against the order of the Additional Commissioner of Income-tax, an appeal lies to the Board of Direct Taxes. I take it that if the Board has to perform its duties, it must have a high degree of revenue bias. What is the use of providing an appeal from Caesar to Caesar? It is an appeal from the right hand to the left hand. If at all, the Board is expected to be ever ready to put its mark of approval on what the Additional Commissioner has said. Sir, appeal is an invaluable right. There are honest assesseees also, therefore, one in a thousand or two thousand but his interest must be safeguarded. It is of utmost importance in any jurisprudence which is supposed to govern a civilized society that the appeal must always be decided by an impartial and independent tribunal or else it becomes mockery of justice. Therefore, the appeal should under no circumstances go to the Board. It should go to the Income-tax Appellate Tribunal. After all, Tribunals have earned a great reputation for their integrity and independent work. They are knowledgeable people of immense dependability for justice and fair play. There is no reason why the appeal should be confined to the Board. If

the Additional Commissioner makes order and the Board accepts it; that would be the end of a matter. That looks extremely crude, unfair and if I may say so, a little barbarous. That should not happen. I am sure the Finance Minister will consider this also.

I have very hurriedly gone through the Bill. I could have made an extensive note and submitted it to the Finance Minister, but that was not possible because of shortage of time. I have pointed out some of the very palpable and glaring lacunae, loopholes and drawbacks. There is tremendous scope for redrafting this measure. The basic theme is very laudable, but the provisions are going to defeat it. I have no doubt about it. Therefore, I hope the Finance Minister will agree to referring the Bill to a Select Committee and giving the Select Committee sufficient time to deliberate on it and make recommendations.

SHRI JYOTIRMOY BOSU : Sir, I have listened with great attention to the speech of my hon. friend, the prosperous income-tax lawyer. He has been vigorously suggesting that the Bill should take more time to come into existence in the form of an Act. Well, the House will decide, the government will decide how judicious that should be. My party will support any move which results in real realisation and just use of the exchequer which has to go back to the people in the form of services, development and welfare. Here I may quote what the President of the Associated Chamber of Commerce wrote to his counterpart in London : "here in India we are surrounded by an ocean of laws and we will have to comply with them in letter, not in spirit." Are you really going to apply them properly and energetically? No. The performance of the immediate past befits only this government with its present class character. Why is it that in this vast country with a population of 550 million people you have no more than 3 million assesseees? It shows two things. Firstly, the economic condition in this country is deplorable. We are one of the lowest among the 54 countries that are mentioned in the UN list. Secondly, the present taxation machinery has not been able to touch many of the persons who should have come under it.

Coming to Professor Kaldor, who does not belong to my party, he estimated several years ago that loss of tax as a result of income-tax evasion would be between Rs. 200 crores to 300 crores. The Income-tax Investigation Commission which was appointed in 1947 investigated 1058 cases and detected unaccounted income of Rs. 48 crores. Under the voluntary disclosure scheme of 1951, Rs. 70 crores of unaccounted money was disclosed in 20,192 cases. Under the disclosure scheme as embodied in the Finance Act of 1965, 2001 assessees disclosed unaccounted income of Rs. 52.18 crores. The second disclosure scheme in the same year brought forth Rs. 145 crores by over one lakh assesseees. The Income-tax Department was able to impose penalties amounting to Rs. 39.94 crores between 1964 and 1968 for concealing an income of Rs. 161 crores.

Then, the report of the Comptroller and Auditor-General of India for 1969-70 contains startling statistics. This report reveals that the gross tax arrears amounted to the staggering figure of about Rs. 960 crores of which 82 per cent was due to tax on incomes (personal and corporate).

Why should this government ask for more powers when they have been unable to use what they have already got in their hands? This shows that they are not really serious about this business. They want only to hoodwink the public by asking for more legislation. They have so many laws in the statute book which they do not use. It is just like a beautiful library with a large number of books which is seldom used.

Here I want to say either the hon. Minister or the Auditor-General has misled the House. In reply to Unstarred Question No. 1027 in the Rajya Sabha Shri K. R. Ganesh stated that the total outstanding amount of income-tax as on 31st March, 1971 was Rs. 490.8 crores as against Rs. 507.91 crores on 31.3.70. He added that the figures for 1971 are provisional as the final figures are not yet available. Whose figures should we take as true, that of the Auditor-General or of the hon. Minister? Shri Ganesh promises to meet this point; otherwise, we shall take it for granted that

he had deliberately misled the House and the people of this country.

SHRI PILLOO MODY (Godhra): Misled about what?

SHRI JYOTIRMOY BOSU: About the figures of arrears of taxes.

SHRI N. K. P. SALVE: What has that to do with the acquisition of immovable property?

SHRI JYOTIRMOY BOSU: Now I come to Government's failure. "Operation 'RAT' fails to enrich exchequer", I am quoting from papers. It says:

"Operation 'RAT' (Reduction of Arrears of Tax), which was launched by the Finance Ministry with much fanfare last year, has failed to fetch the Central exchequer tax outstandings running into several crores."

These paper tigers are only trying to have a lot of mane on their body! It says:

"Further, this increase was by no means a record, as the department had recovered nearly Rs. 40 crores more between 1967-68 and 1968-69."

So, the recent recovery, this Rat business, really assumed the size of a rat. It did not really cut much ice.

What I read new will reveal the extent to which evasions are made. I quote Shri K. R. Ganesh again:

".....consequent upon Mr. Chandrasekhar's charges in Rajya Sabha in 1967-68, had yielded to the Exchequer an additional tax revenue of Rs. 30.24 crores."

This was not on Government's initiative. Shri Chandrasekhar had to reveal certain things on the floor of the House and the Government took the clue from that and acted.

SHRI PILLOO MODY: He did not even get his percentage for disclosure!

SHRI JYOTIRMOY BOSU: That they will not give.

I come to the next item here. It says:

[Shri Jyotirmoy Bosu]

"Birla empire had been informed in advance about the Government's decision."

It refers to Government trying to look into the matter and catch him. What is the outcome ?

"The Hindustan Engineering and Construction Company of the Birlas had shown a profit of only Rs. 2.6 lakhs. The Government was informed that the profit was faked up and that the real profit was Rs. 72 lakhs."

That was later substantiated. A man can get a rubber seal by paying tax on Rs. 2.6 lakhs while his actual profit is Rs. 72 lakhs, just about 36 times of what he has paid if not more !

About Mundhra, the big patron of the ruling party.....*(Interruption)*.

SHRI R. V. SWAMINATHAN (Madurai) : Who is Mundhra ?

SHRI JYOTIRMOY BOSU : Haridas Mundhra.

SHRI R. V. SWAMINATHAN : He is not the patron of the ruling party.

SHRI JYOTIRMOY BOSU : Have I got to talk about Shri Subramaniam here ? I do not wish to, particularly today. The steel deal and the Steel Minister's friendships, we do not want to talk about at the moment. There are other occasions when I will tell you about that.

SHRI S. M. BANERJEE (Kanpur) : Aminchand Peareyal.

SHRI JYOTIRMOY BOSU : I know, they are the patron saints of the ruling party.

The total arrears of Shri Haridas Mundhra, as quoted in one of the most circulated papers in India, is Rs. 2 38,97,000 although the ministers from the Finance Ministry had been giving wrong and misleading figures at different forums.

In Calcutta, where the capitalists are constantly talking about labour unrest, law

and order, and where misappropriation of the money given for provident fund has been one of the highest in the country, income-tax arrears of big assesseees in Central Calcutta area amounted to Rs. 50 crores while the total arrears for the whole of West Bengal is approximately Rs. 240 crores. These big industrialists cannot be disturbed because they are helping Shrimati Gandhi in furthering her political cause in West Bengal. Therefore, they cannot be pressed for payment of money...*(Interruption)*.

If Shri Chavan is really serious, he can go in for a cost accounts audit about which I have mentioned time and time again in this House. The usual *modus operandi* or the method of evasion of big industrialists is through inflated cost of production and deflated sales revenue. That is the main head. If you really are serious about treating the disease at the very root, you go in for immediate cost account auditing and your job will be far more simplified. But my party will never think that you will ever go in for that.

Coming to the question of physical verification, an Income-Tax Officer, sitting in his office, delegating his powers and working through files and letters, seldom comes anywhere near satisfaction. There should be more provision for physical check and physical verification. There is very little departmental set up and the Income-Tax Office today is a terror for the small assesseees but it is a big joke for the big ones. Today, there is a lot of dissatisfaction amongst Income-Tax Officers in regard to distinction that exists between Class I and Class II ITOs doing the same job and have the same workload but on different terms and on different salaries.

I want to make another submission also that a worker when he gets his salary, when he gets his bonus and when he gets his other emoluments other than his salary, should not be taxed all at a time. It should be done either on quarterly or on monthly basis.

Then, I come to the question of back money. Black money has been responsible for stagnation in industrial growth for the

simple reason that the industrialists are not revealing their true profits and the true profits are being siphoned out to the second line of currency circulation, namely, black money. As a result, the white money sources in the books of accounts are getting dried up. That is the reason why the industrial growth stagnation has come about. As has been pointed out this morning, the spiralling rise in prices in daily items and the cost of living are also due to the predominance of black money in circulation which is collected out of evaded money.

This is what Mr. Chavan is stated to have said that there is more black money than white money in the country. Mr. Chavan, the Finance Minister, speaking at a meeting of the Congress Parliamentary Party's Executive Committee is reported to have said, "A parallel economy of unaccounted money now exists" and that black money was being added every minute. What are you doing about it, Mr. Chavan ?

There is a currency circulation of about Rs. 2,450 crores. But you will be surprised to hear that black money is almost near-about that amount because the whole amount is not in cash and cash is converted into kind, like, precious stones, jewels and many other things.

We have seen that political factional fights within the ruling party have revealed certain things. I have a clipping here which says, "MP in black money racket". It says :

"A series of raids by Income-tax officials for black money in Andhra Pradesh launched on the eve of the Chief Minister, Mr. Brahmananda Reddy, agreeing to step down from power, is still going on and the latest victims are two Members of Parliament."

I do not want to mention the name here. It further says :

"...was elected to the Lok Sabha on the Congress (N) ticket during the snap poll and is one of the top industrialists of the State. He is director of a number of concerns including banks,"

Because of serious factional fights within the ruling party, these things have come to light. Otherwise, you would have never seen these things happening before you.

These safe deposit vaults and lockers are another menace. You have been talking about having some sort of control on the lockers. But so far you have done nothing and the lockers are now holding more black money, more undesirable currency, than anywhere else. I do not know what you want to do about it. I would like to hear from you today as to what you propose to do.

**SHRI S. M. BANERJEE :** He is going to unlock it.

**SHRI JYOTIRMOY BOSU :** About this racket of converting black money into white, I have here a very interesting press clipping. Official sources said that the prize-winning raffle tickets for several lakhs of rupees were seized from the custody of the agents. It has become a common practice, and also if you make a trip to the apple-growing areas of the north like Kulu and Kashmir and other places, you will see that big industrialists who have no interest in horticulture are investing money by the millions because that has become a beautiful and convenient machinery for converting black money into white.

There are other menaces too. What can we do ? The black money had been the saviour of certain political parties, particularly, the ruling party. During the last election they had to collect Rs. 50 to 60 crores and who would give them white money ?

**SHRI A. K. M. ISHAQUE (Basirhat) :** Mr. Jyotirmoy Bosu, start writing fairy tales. That will give you more money... (*Interruptions*)

**SHRI PILOO MODY :** They won the elections without spending any money.

**SHRI JYOTIRMOY BOSU :** This discovery of Rs. 50 lakhs from the State Bank's strong room—Mr. Nagarwala case, should act as an eye-opener as to where the money comes from, Who is the controlling authority

[Shri Jyotirmoy Bosu]

of the State Bank ? Let Mr. Chavan speak the truth. Where did the money come from ? Who were the people who had to receive that money ? How was that money accounted for in the books of the bank ? How was it going to be disposed of ? These are the things we want to know.

Another greatest evil is the menace of over-invoicing and under-invoicing. A committee headed by Mr. M. G. Kaul has given a report and in the morning I have alleged that they have deliberately tried to underplay the magnitude of the menace with a certain motive—I am sorry to say this. They have said that under-invoicing and over-invoicing is not so much, it is perhaps of the order of Rs. 60-80 crores. But the Administrative Reforms Commission panel has said in so many words that over-invoicing and under-invoicing is to the tune of Rs. 200 crores. But if I have any conviction based on experience, I have seen with my own eyes that under-invoicing and over-invoicing runs to Rs. 300-400 crores a year.

AN HON. MEMBER : What is your experience ?

SHRI JYOTIRMOY BOSU : I have 14 photostat copies of correspondence between British firms and their mother firms in Europe. These should also be with the Ministry of Finance. I can name the persons who have got it.

SHRI PILOO MODY : They collected from all of them ?

SHRI A. K. M. ISHAQUE : You produce the photostat copies after the House adjourns.

SHRI JYOTIRMOY BOSU : I can give it to him again tomorrow if he wants.

SHRI YESHWANTRAO CHAVAN : It is not a question of my wanting. If you want, you can give...*(Interruptions)*.

SHRI JYOTIRMOY BOSU : The Public Accounts Committee of the Fourth Lok Sabha says in its 56th report—it was headed by Mr. Minoo Masani, not a CPM man. What does he say ?

“An idea of the extent of over-valuation can be had from the fact that the imported raw hide and skin, both cleared and uncleared, the value of which was estimated at Rs. 1,35,000 was in fact invoiced at Rs. 1,54,32,438.”

Do you know how much it works out to ? 14,900%. Inflation was done to the extent of 14,900%.

I come to another paragraph.

Then the Committee says :

“The Committee got an impression during evidence that hardly any check was exercised against over-invoicing at the licensing stage. Even though there was a provision for indication of the quantity in the import licence, no such indication was given in the case of non-capital goods. Nor was there any check at the foreign exchange releasing stage.”

So, Mr. Chavan, this is what it is. Then it says :

“The Committee are concerned over the performance of the Customs Department in these cases. It appears to them surprising that the appraising staff of the Department, who were supposed to keep in constant touch with the market and maintain registers showing the prices of commodities coming from various sources, should not have been able to detect these cases, overinvoicing in some of which was as high as 228 times the assessed values. It was urged in evidence that the appraising staff at minor ports was not high-ranking enough...”

—All bogus things.

Then it says :

"The Committee are pained to observe that at a time when this country was facing a serious shortage of foreign exchange, the Ministry of Commerce should have issued licences worth crores of rupees for the import of raw hides and skins to persons who were not interested in importing these materials. As pointed out by the representative of the Central Bureau of Investigation in evidence, the licencees had perhaps enough materials of their own, with the result that most of them sold their import entitlements at a paltry commission of 2 to 3%, and some of them even surrendered their entitlements. This shows how wrong the Export Promotion Council had been in their assessment of the need for imports of these materials."

This only shows that the people behind all these were very rich and influential persons. I am only quoting from the Committee's report. They get away after doing all these things.

SHRI N.K.P. SALVE : But what happens to the Bill ? Do you support it ?

SHRI JYOTIRMOY BOSU : I have already said that my party will support any measure that will bring more taxes to the Exchequer.

SHRI N. K. P. SALVE : That is philosophy. But, in terms of concrete action, do you support the enactment ?

SHRI JYOTIRMOY BOSU : May I take it that you are a person without a philosophy in life ? I did not know that my colleague had no philosophy in life.

I had been to London recently. I would like to tell about one interesting thing. I know the way tea transactions are sold and bought. I was once assistant there in the fifties. In those days we could not finish the transaction in Mincing Lane for 1  $\frac{1}{2}$  days. Today the whole catalogue is over in half an hour. This is the position. Why should this be so ? I request Mr. Chavan to kindly enquire into this. Several crores of rupees

worth of taxes are evaded. This is being done to hoodwink the people at the Foreign Exchange counters. This is being done to hoodwink the sales tax people in this country, to hoodwink the workers who are working hard in the plantations. They are selling tea under forward contracts, they sell tea on water so that it does not pass through the auction. All these things are happening and this is a thing where I request Mr. Chavan to make enquiries and see what is happening.

These over-invoicing and under-invoicing transactions run into several crores. For the last 6 years we have been pointing this out to the Government, but they are complacent about it and they don't move an inch in this matter. It is because they don't want to annoy their foreign monopolists. Again, I would ask my hon. friend why they behaved so leniently in the BOAC gold smuggling case. They did so because they had no alternative. They received such great pressure from Whitehall that they had to do so. Again, what did they do in the case of Bird & Co. ? Mountbatten come here and pressurised them and they developed cold feet and they would not dare to touch them. They may talk about a small assessee making Rs. 30,000 a year and harass him, but they dare not touch these big assessees. But I say that we shall always be with them whenever they make an attempt to collect more revenue for the exchequer. In fact we had supported them when they nationalised the banks; again, we had supported them also when they nationalised general insurance. But what has been the outcome ? If this Bill really means collection of more tax and more tax money for the people, then my party will be with them.

SHRI DINESH CHANDRA GOSWAMI: (Gauhati) : Tax arrears and black money have been the two gigantic problems that we are facing today on the economic front of the country. In fact, the entire economic complex of this country can be changed and almost the entire deficit in the budget can be bridged, if we can find out effective ways and means to collect these tax arrears and stop the foul play of the thousands of crores of black money. Therefore, any measure which

[Shri Dinesh Chandra Goswami]

will try to achieve these twin objectives will undoubtedly get the support of all the Members of the House and also the people outside in the country. But I am in agreement with the previous speakers that the Bill in the form in which it has been brought forward before this House will not be able to achieve these two twin objectives. We have complete support for the objectives, but the measures suggested in the Bill suffer from various lacunae to which attention has already been drawn by Shri Seeloyan and also Shri N. K. P. Salve.

Apart from those legal niceties, I have also my personal doubts as to whether certain provisions of this Bill would be able to stand the test of articles 19 and 14 of the Constitution. Further I feel that the complex procedure laid down in the Bill for the acquisition of properties will leave no benefit but will only mean a further drain of the State revenue and overburdening of the two departments. Firstly, how out of the hundreds of the transfers that take place every day the income-tax authorities or the officers of the Income-tax Department will determine whether a person has sold the property at a lesser value with the intentions as has been mentioned in the provisions of sec. 269 (c) of the Bill. Assuming that the authority detects such a case, under the said provision objections shall have to be called and there will be objections, and then there will be a hearing, and then after completion of these formalities there will be an order. All this will take a sufficient amount of time. Then there is the provision of appeal to the Board. By that time, the party may go to the High Court and the Supreme Court. During this period, certain improvements may have been made or certain deteriorations may have occurred to the property. These again will have to be determined with a view to fixing the quantum to be allowed for the improvements or for depreciation. If there is no agreement on this, again the matter will have to go to a civil court. We know how the civil courts function in this country, and it will take about ten years. So, the case will involve a lot of litigation and hardly one case will be disposed of within twenty years. Therefore, I think that the objectives will be

frustrated. Rather, it would mean overburdening the Income-tax Department and also a further drain on the national resources.

We cannot also forget the fact that the income-tax authorities have not been able to show the desired efficiency in the collection of revenues. The tax arrears are mounting up. For instance, in 1960-61, the amount payable was Rs. 242.2 crores, and the amount collected was Rs. 167.4 crores, which reflected only 63.8 per cent of the demand. But this has gone down in 1966-67 to 58.9 per cent. Therefore, while we are all in favour of the basic objectives with which this Bill has been brought forward before this House, personally I feel that this Bill will not be able to achieve the purpose in view. I am in complete agreement with the previous speakers that an amending Bill or a new Bill should not be brought forward frequently in the case of tax statutes, if they will not be able to achieve the purposes for which they are brought forward. So, I feel that the Finance Minister may have a second look at the entire thing, so that after two years he may not have to come back and say that he has not been able to achieve the objective in view, because that will not help us in any manner.

In this context, I would like to refer to two other aspects which though not strictly relevant to this Bill do require consideration. To have an effective machinery of income tax, we should have a set of contented officers. But as has been pointed out by Shri Jyotirmoy Bosu, an artificial creation of Income Tax Officers class I and class II has led to a lot of resentment and discontentment in the country. I hold no brief for any officers but at the same time officers doing the same type of work should not be artificially classified separately. The old Income Tax Act of 1922 as well as the present one does not differentiate between ITOs class I and class II. In actual practice also, there is no distinction between these two classes of officers so far as allocation of their duties is concerned. In assessing their work, the standard applied by the

CBR is identical. The Government of India also had affirmed in an affidavit in connection with a writ petition, in the Supreme Court, No. 5 of 1966, that in the Income Tax Department, the functions and responsibilities of the Class I and Class II Income-tax Officers are the same. Considering all these aspects, the Chairman of the Central Board of Direct Taxes in a note appended before the Public Accounts Committee, in the 29th Report of the Public Accounts Committee, on 29-4-68 observed that 'to improve the conditions of service of the officers and to combat the temptation to leave the department, the class II services of ITO should be abolished.' Government intimated the PAC on 4-1-69 that they would examine this suggestion made in the 29th report and would take suitable action thereon. but unfortunately, nothing has been done so far. In fact, the then Finance Minister, Shri Morarji Desai, had also assured the Income Tax Officers in 1968 that he was trying to abolish the distinction.

My submission is that this type of creation of artificial barriers between officers doing identical work should go so that each officer know where he stands. It is also unfortunate that today there are no comprehensive statutory rules which actually regulate either the appointment or promotion or other conditions of service of ITOs. There are certain administrative rules which have become obsolete. To gear up the administrative machinery, a set of comprehensive statutory rules should be framed as early as possible.

The other aspect to which I want to draw the attention of Finance Minister concerns tax incentives. There has been so much talk of black money and arrears of tax. One of the reasons of successful evasion on both these matters is that today all industries are located only in certain places. The prime need of the country at the present juncture is decentralisation of industrial complex to correct regional imbalances. Can we not at this stage formulate the tax policy to help in diverting the industries so as to rectify regional imbalance? I do not know whether it will find favour, but it may be that we can try to

have a tax incentive for starting industries where there is no industrial atmosphere today. Take for example the State from which I come. There are so many difficulties there due to which industrialists are not keen to open industries there. It is obvious that for a successful industrial complex, certain basic amenities like transport, water, electricity, housing, technical facilities are required but those are missing in my State, for which an industrialist is not keen to have a new venture. A tax holiday or tax incentive may act as a fillip to the establishment of industries in such places.

This type of tax incentive will not be a measure new in this country alone. It has been tried in different countries like Argentina, Brazil, Canada, Iran and Italy with success. I would request the Finance Minister to consider whether this sort of incentive can be given a trial in industrially backward areas. One such tax incentive now is offered in the tribal areas of Assam by exempting persons belonging to scheduled tribes from payment of taxes. Obviously the purpose of this measure is to create a healthy economic climate in backward areas, but it has not in my humble opinion, been achieved. What has happened is that people who are affluent nowadays take all the contracts or do the business in the name of the scheduled tribes with the result that all the money goes into their pockets and they have not to pay any tax. The measure was undoubtedly not intended to provide benefit to such unscrupulous persons.

Instead of that if we try to give tax incentives for the purpose of building new industry, that will probably reap more benefits from the economic point of view. So, I request the Finance Minister to reconsider the whole Bill in view of the various arguments put forward by the previous speakers also and consider seriously removing the artificial barrier between two classes of officers and also the provision about tax incentives.

**SHRI VIRENDRA AGARWAL**  
(Moradabad) : The objective of the Government in bringing forward this Bill



[Shri Virendra Agarwal]

may be good but if this Bill is approved in the present form in my opinion it would benefit neither the Government nor the honest assessee, nor will it serve the larger objective of social justice. Personally I hold the view that a Bill of this nature should be considered by a select committee so that all the pros and cons could be analysed.

Every year when the Finance Minister presents the budget, he talks in terms of simplification and rationalisation of the tax structure. And during the last decade more than 600 amendments have been brought forward to the income-tax laws; all meant to simplify the fiscal policy. But the tax laws have been made more complicated and cumbersome and have become difficult to implement. Therefore the Government should consider whether they could stop amending the taxation laws so often as they have been doing till now.

This particular Bill gives great scope for corruption. The Valuation officer has been granted sweeping powers which are likely to be misused; they will tempt him to go corrupt, and will also induce the honest assessee to hoodwink the Government. Therefore, I suggest that a select Committee be asked to consider the proposition that the immovable property in question should be auctioned straightway under the supervision of some competent judicial authority. In that case there would be no question of determination of market value by the valuation officer. The valuation officer as designed in this Bill will lead to so much corruption that in the whole process of taxation only the honest assessee would in the end suffer. Therefore, while supporting the objectives of the Bill, I suggest that the Bill be considered by a Select Committee in detail.

SHRI K. BALATHANDAYUTHAM (Coimbatore): This Bill, which comes in pursuance of an assurance given by the Finance Minister during the Budget speech that he would take the deceptionists at their word and pay the value for which the document was registered is, according to us, a mere eye-wash in the context of the magni-

tude of the problem of black money and the extent of evasion in our country.

15'44 hrs.

[SHRI SEZHIYAN *in the Chair*]

Their complacency was understandable some time back but in the context of today when they are declaring day-in and day-out a situation of national emergency, this is mere tinkering with the problem.

The speakers before me have enumerated the forms that black money takes. It is in currency, it is in movable property, it is in immovable property. Its extent also has been to an extent sized up by the Government. This Bill wants to deal with transfers. It is one more addition, as the previous speakers have pointed out, to this jungle of rules and regulations and laws. The bigger the jungle the more scope for escape, the more scope for hiding oneself and the more scope for lawyers to interpret the law and find more loopholes. I can at the very outset on behalf of my party say on the basis of our experience that this Bill is not going to lead to the capture of any single transfer, on the other hand it is creating new scope for corruption. The so-called valuers are going to reap a harvest in the name of this Law, but the exchequer is not going to benefit because it is a half-hearted measure.

If the Government is earnest, it must have exhibited its earnestness in one form or another. With regard to black money in currency which, according to many are in thousands of crores, we have been suggesting every time demonetisation. Even if you do not gain anything, what do you lose? But they cannot contemplate it. Black money made in a hundred ways is preserved in a thousand ways and here is an attempt of dealing with transfers in a very half-hearted manner. I thought the conception of compensation had changed with the 25th Amendment of the Constitution brought in this House, I thought you were not going to pay the market value but if necessary something so that there is no hardship to the person concerned, but here is a

person who has defrauded the exchequer and evaded taxes but you want to pay compensation at the value registered in the documents, and you are going to pay a solatium of 15 per cent. So, the whole approach in bringing the Bill seems to be to explain away saying that the Government has done all that it can, that there is enough legislation on the statute book. As the Finance Minister said in the morning, there is nothing wrong in the law. As the Railway Minister said, they have rules that the saloon should not be attached to express trains, but he can only talk about rules and not about what is happening. Similarly, the Finance Minister also can talk only about rules. The rule is that if there is a difference in value between the apparent consideration and the fair market value, the property will be acquired, but what happens will be a different matter. That is why I say this is an eyewash.

Even in a time of emergency when the law has to be strengthened, when the co-operation of the entire people has to be won over by the Government, they resort to indirect taxation by ordinances, but when you come to dealing with evasion of taxation, you have got evasive Bills. Mr. Salve has pointed out all the loopholes in the very drafting of the Bill, but it is not accidental. I do not believe that our Secretariat is so inefficient that they can be caught by Mr. Salve. There must be strong links that operate that make the Secretariat inefficient, make the Ministry incapable of dealing with evasion by the big sharks. They become very capable when it is a question of indirect taxation by ordinances. So, I am not prepared to walk into their net and start giving suggestions in the clause-by-clause consideration when the whole approach is merely to satisfy their conscience that they have brought a Bill.

You have brought a Bill and passed it. But what is going to happen? You are not serious at all. I have come across a case where there was a raid in the house of a big shark in my State and 19 officers were beaten up. The police came to their help, but the next day, the police were questioned as to why they exceeded their jurisdiction by walking into another area. The double account seized by the 19 officers who were in the hospital were taken back and handed over

to the shark. When we intervened, they said, "It is beyond us. The pressure is from above, at the all-India level. At the State level, we cannot do anything. He has all-India pull." There is another case of an excise officer who gave clues which led to the discovery of 63 sharks who were evading taxes and keeping crores of black money. All the offences were proved, but the fellow who gave the clue instead of being rewarded, was blacklisted. All our efforts to get him at least removed from the black-list failed, in spite of ministerial intervention.

In another case, a habitual offender against property broke into the house of a cine artist in Bombay and looted jewels, etc. All that property was seized by the police. Some admirers of the cine artiste caught hold of him and brought him to the court. That fellow, who unearthed so much of concealed jewels and diamonds, was not rewarded. I think only after that, the ministry thought of providing safe deposit vaults to protect the big sharks from such habitual offenders, who alone will be able to unearth the concealed wealth of such big-sharks.

In view of this past experience, we feel this Bill is just an eye-wash. The sharks do not understand anything except confiscation and jail sentences. If you are serious about implementing it, you should put one of the big sharks behind the bars. Pandit Nehru spoke of hanging them from the nearest lamp-post in the streets. The provision should not only be exemplary but it should put the fear of God into them and make them realise that the Government is serious. Otherwise, nothing will happen. You are going to have valuers and after that a solatium! About penalty, it is six months' imprisonment or fine. I would like to delete the fine. When I proposed it to a group of lawyers, they said then the courts will always acquit them, because the courts cannot imagine such eminent people being put into jail!

If I am the officer in charge and if I unearth a lot of concealed money, when he officers a part of it to me, why should I go ahead with the prosecution and try to convict him? But if I am an honest man and if I do

[Shri Balathandayutham]

pot yield to the temptation of accepting a share of the concealed wealth, I take him to the court, but he is simply fined. For the first offence, he is acquitted. For the second offence, he is fined. So, this is not going to deter them. I thought this Bill would act as a deterrent and reduce such offences. But the Bill is so wishy-washy, so inadequate and so scrappy. You are just trying to create the impression that you are up against evaders trying to save your conscience. If the Minister agrees to refer the Bill to a Select Committee, I appeal to him not to confine it to transfer of immovable properties alone.

You should take into account all forms of concealment, all forms of black money and have a Bill to simplify the whole Income-tax Act. You should seriously see to it that you are able to get what is legitimately due to the exchequer. Otherwise, I warn you, you are going to face a very serious economic crisis the like of which you have not faced so far. I want you to bear in mind what Ceylon has passed through. Ceylon, inspite of having a progressive government, had to go through a very trying period. So, I want you to learn a lesson from that and take drastic steps, if necessary, even nationalisation or confiscation and failing people for the offences mentioned in this Bill. The punishment should be made more deterrent. If you are really serious, you should bring forward a legislation which will deliver the goods.

**SHRI PILOO MODY (Godhra) :** Mr. Chairman, I would like to congratulate the Finance Minister and the Government that after talking about this subject for the last twenty years they have at least buckled down to doing something about tax evasion. But, unfortunately, their present attempt, as you have heard the last speaker say, is as futile as their past attempts and I sometimes wonder whether there is any seriousness of purpose behind arming the government with all the powers that it continues to arm itself with year after year. If you were to read the massive legislation that this government has produced, I think you will find that nobody

in his right senses, not even a genius, not even a computer would be able to define clearly the area of honesty and the area of dishonesty. My charge against this government has been that during all these years it has not produced any legislation that protects the honest man against the tyranny of the government. They have produced laws which will ultimately share a few modest small people and all the big fish always manage to find their way out of the net cast by this government.

They talk about market value. Have you defined at any time what the market value of a property is? You are about to make legislation which puts every single property under the purview of your department and yet you have not defined what the market value is at any time. I think the citizen of this country has a right to know what the actual market value is and it should not be left to some officer, some Engineer in the PWD or some valuer in the Income tax Department, who will arbitrarily decide what the value of the property is. I do not want to go into the details of this particular problem, but I hold very strong views on this and I hope I will have an opportunity of passing them on to the hon. Minister in the Select Committee.

15-59 hrs.

[MR. SPEAKER in the Chair]

There is also a vast area of discretion which is discriminatory to an honest man; discretion is there at every stage. The income-tax department arbitrarily catches hold of an innocent man.

**MR. SPEAKER :** May I request the hon. Member...

**SHRI PILOO MODY :** There are yet two minutes to four and I can finish today.

**MR. SPEAKER :** Would he like to finish his speech today or continue tomorrow?

SHRI PILOO MODY : All right. I will finish it tomorrow.

MR. SPEAKER : Then, what about those two minutes ?

SHRI PILOO MODY : Overnight time always multiplies. I have left the option to you and you have allowed me to continue tomorrow.

16'00 hrs.

MOTION RE. FAILURE OF DELHI  
POLICE TO PREVENT VIOLENCE  
AT 7, JANTAR MANTAR ROAD  
AND INCIDENTS CONNEC-  
TED THEREWITH

MR. SPEAKER : We will now take up item 11 fixed for 4 o'Clock.

SHRI NARSINGH NARAIN PANDEY (Gorakhpur) : I rise on a point of order and I want your ruling on it.

MR. SPEAKER : This is in the name of Shri Shyamnandan Mishra and Shri Morarji Desai.

SHRI S. M. BANERJEE (Kanpur) : May I seek a clarification from you ? Suddenly an addendum to the Revised List of Business has been circulated saying,—

“Item 11

after ‘SHRI SHYAMNANDAN MISHRA’

add “SHRI MORARJI R. DESAI” ”

This was not circulated this morning. The name has suddenly come up. Therefore, will you allow that my name also be added to the discussion tomorrow ? I know, when Shri Dange, who was the leader of our group then, wanted to start the Pay Commission discussion, you gave the ruling that Banerjee should start it. I have every respect for Shri Morarji Desai. Let him speak. But if it is a mistake on the part of the office...*(Interruption)*.

MR. SPEAKER : It is not a mistake on the part of the office. They had applied later

that this motion was in the name of both of them. So, this name was added later on, afterwards. But only one of them will be allowed, not both of them.

SHRI S. M. BANERJEE : I know it. But Shri Shyamnandan Mishra might move it for a minute and then Shri Morarji Desai may speak. We do not mind that. But this will be a dangerous thing. Supposing, I know of a calling-attention notice being admitted at 10:30 today, which I have not tabled, I can send my name for inclusion.

MR. SPEAKER : This motion is under rule 184. The procedure for calling-attention is entirely different from that under rule 184. Under rule 184 they gave another name. We bracketed it. But only one of them can place it before the House.

SHRI S. M. BANERJEE : Tomorrow there is a motion on West Bengal by Shri Jyotirmoy Bosu and Shri Samar Mukherjee. They belong to the same party. Shri Jyotirmoy Bosu might drop out and ask Shri Samar Mukherjee to speak. I can understand it. But there was only one signatory to this motion, Shri Shyamnandan Mishra.

SHRI SURENDRA MOHANTY (Kendrapara) : On a point of order, Sir. Can there be any ruling on a hypothetical matter ?

SHRI S. M. BANERJEE : I really pity his intelligence. He says, it is hypothetical. It is on the agenda. They gave only one name. Even on today's order paper it says, “Shri Shyamnandan Mishra to move the following”. Suddenly we find that Shri Morarjee Desai's name has been added to it. I do not mind; let Shri Morarji Desai speak, but let Shri Shyamnandan Mishra initiate the debate. There were no two names on the motion. It has been added afterwards. It is an afterthought. I can challenge. If you have allowed it, I bow to your ruling. But it will set a bad example. Tomorrow, I may claim the same thing.

SHRI M. KALYANASUNDARAM : The Speaker has the power to prepare the Order Paper. In this case, the Order Paper