

[Mr. Deputy-Speaker]

Enacting Formula

Amendment made:

Page 1, line 1,—

for 'Fourteenth' substitute
'Fifteenth'.

(Shri Manubhai Shah)

Mr. Deputy-Speaker: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended was added to the Bill.

The Title was added to the Bill.

Shri Manubhai Shah: I beg to move:

"That the Bill, as amended, be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

13:44 hrs.

TAXATION LAWS (CONTINUA-
TION AND VALIDATION OF
RECOVERY PROCEEDINGS)
BILL

The Minister of Finance (Shri T. T. Krishnamachari): Mr. Deputy-Speaker, Sir, I beg to move:

"That the Bill to provide for the continuation and validation of proceedings in relation to Government dues and for matters connected therewith be taken into consideration.

The object of this Bill is to ensure due continuity and effectiveness of proceedings initiated for collection and recovery of tax demands outstanding against assessee, without

prejudice to the legitimate rights of an assessee who genuinely disputes the validity or correctness of the quantum of the demand created against him. As explained in the Statement of Objects and Reasons, the Bill has been necessitated by a recent judgment of the Supreme Court according to which, where a tax demand created on the basis of an assessment order is varied by an appellate or revisionary authority, the original order merges into the order of such authority, and all steps already taken for the collection or recovery of the demand with reference to the original order become inoperative under the law. On the principles enunciated in this judgment, it would become necessary for the tax authorities in all cases wherever the demand based on the original order has been reduced on appeal or revision, to take proceedings ab initio for the collection and recovery of the portion of the demand which has been sustained by the issue of a fresh demand notice and allow time to the assessee afresh for payment of that demand, even though the reduction obtained by the assessee might be insignificant and he might have had ample time of several months or even years for the payment of that demand. Following this principle to its logical conclusion, fresh demand notices may have to be issued even where the original assessment order has been confirmed, because in that case also it may be argued that when the appellate or revisionary order is made, the original order of assessment merges into it and all action for collection or recovery taken on its basis ceases to be effective under the law.

I have mentioned previously in this House during the discussion on the Demands for Grants relating to the Finance Ministry that it is necessary for us to strike a balance between the rights of the citizen and the rights of the State in the matter of taxation. The Income-tax Act con-

ains adequate provision for safeguarding the rights of the citizen. Thus, under one of the provisions in section 220 of the Income-tax Act, 1961 (corresponding to section 45 of the Indian Income-tax Act of 1922) it is open to an assessee who does not accept the assessment made by the Income-tax Officer and goes on appeal to the Appellate Assistant Commissioner to make an application before the income-tax officer for a stay of the collection of the disputed amount of tax till the disposal of his appeal. The income-tax officer is bound to consider the application on merits and to stay recovery in cases of bona fide dispute. The assessee can also approach higher authorities in the matter. Further, where a demand has been reduced on appeal, the income-tax officer is required to ask the tax recovery officer to stay the recovery of the balance of the tax demand even though the Department might have gone in appeal to the higher authorities against that appellate order.

An income-tax officer is empowered to impose a penalty on a defaulting assessee if the undisputed tax is not paid by him within the time allowed in the notice of demand. Before levying a penalty the income-tax officer is required to give him a reasonable opportunity of being heard. This gives the assessee one more opportunity for paying the tax before the penalty is actually levied. The order imposing the penalty is also appealable.

These provisions are necessary for safeguarding the legitimate rights of the assessee. However, on the other side, we come across a considerable number of cases where assessee are not willing to pay even the demand created on provisional assessments, which are based on the income returned by assessee themselves. There are numerous cases where assessee who have earned large income have been defaulting in the payment of tax demanded on

the basis of assessment orders which have been upheld in appeal. When pressed for payment, many have succeeded in obtaining temporary injunctions from the courts, on various frivolous pleas, for the stay of the action for recovery. The Department, no doubt, succeeds in the majority of such cases before the courts, but this takes time, and dishonest assessee have been found to utilise the interval for realising or transferring their property through benami transactions or otherwise in order to evade recovery. A very large amount of arrear tax demands is accounted for by such assessee. And hon. Members of this House have been constantly pointing their finger at the large amount of arrears that remain to be recovered. We cannot, therefore, afford to accept the proposition that the entire amount of a tax demand created by the taxing authorities is washed out the moment it has been made the subject of an appellate or revisionary order and a part of it is reduced and that collection or recovery proceedings should be instituted afresh for the demand which has been upheld. If this position were accepted, all that an assessee owing large amount of taxes to the State would need to do is to file an appeal against his assessment. Then, all the proceedings already taken for the recovery of the tax would be completely washed out, even though the bulk of the tax demand has been sustained on appeal. It is apparent that if this position is accepted, the collection of taxes lawfully due to Government would be delayed considerably and might even be put in jeopardy in many cases. The practice of the Department all along since the Income-tax Act came into operation has been to serve a fresh notice of demand on an assessee only where the amount of the original demand was enhanced by an appellate or revisionary order. A fresh notice of demand in such cases is issued only in respect of the additional amount of tax due from the assessee. Where

[Shri T. T. Krishnamachari]

there is a reduction in the demand, the practice has been to intimate the assessee as well as the tax recovery officer of the reduction in the demand, without issuing a fresh demand notice so that the recovery of the taxes finally due from the assessee may be proceeded with without any interruption. This does not prejudice the assessee because under the law he is required to pay the demand which has been sustained on appeal. The Bill seeks to make provisions for the continuation and validation of this procedure in regard to the collection or recovery of Government dues. Further, it seeks to make a provision that where the order reducing the tax demand becomes final and any penalty already imposed upon an assessee for the default in payment of that tax exceeds the demand as reduced, the excess amount of the penalty shall not be recovered and shall be refunded to the assessee if it had already been collected. This will safeguard the interest of an assessee who has not succeeded in his appeal against the imposition of the penalty or has not filed an appeal against it.

I have indicated broadly the object underlying this Bill and also its main provisions. There can be no dispute regarding the need for taking measures to ensure that the recovery of the Government dues is not unduly delayed or thwarted. Therefore, I am seeking the support of hon. Members for this Bill.

It may be asked 'Why not accept the Supreme Court's decision?'. Sir, I have outlined the position. The Supreme Court's decision, as it now stands, is vitally concerned with a matter of procedure. If the position is not rectified, then, we do not know the number of assessments that will be affected. It is not a question of our going against a decision of the Supreme Court in a matter of law or in a matter of interpretation of law, but mainly in regard to a

matter of interpretation of procedure in regard to which if adequate steps are not taken to put right the procedure by re-enacting the law, then Government would suffer. The operative portion of this Bill is really clause 3. Hon. Members who read this particular clause will find that the position has been stated very clearly that there is nothing that is being done here to take away any of the legitimate rights of the assessee; but only to help to make recovery easy without imposing the additional work on the Department of issuing fresh demand notices in every case where such procedural changes as contemplated by the Supreme Court come in. Maybe, the totality of such transactions might run to 6-7 lakhs every year. The total number of assessee now, I am glad to say, has risen since last year and the latest figures I have got give us about 16 lakhs of assessee. So, it may come to about 7-8 lakhs. To issue these demands afresh would merely delay the collection of taxes it would also impose a burden on us perhaps necessitating the augmentation of the staff at our disposal.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to provide for the continuation and validation of proceedings in relation to Government dues and matters connected therewith, be taken into consideration."

Shri Heda (Nizamabad): Mr. Deputy-Speaker, Sir, The main intention of this Bill has been explained by the hon. Finance Minister and it is to overcome possible objections from the judiciary. It is time that we assessed the entire procedure of collecting income tax and other taxes. In fact, the experience that the hon. Finance Minister is having at his hand is such that it would not be wrong if I suggest that the country expects from him a radical change and a simpler procedure so that the

tax is not evaded and it is properly collected. It is not for me to tell him that there a great number of persons who evade taxes. I am glad that the number of persons who are paying taxes has increased tremendously. He gave us the latest figure of 16.4 lakhs. This is a big figure. At one time it was only nine lakhs; about 7-8 years ago it was only five lakhs. The real figure would be much larger but we are not able to get them into the orbit. I would repeat one suggestion which was made at one time by Mr. N. V. Gadgil whose views are respected and whose approach to things was remarkable. He has said that even those who may not need to pay incometax should file returns. If we make it compulsory for a larger number of persons to file returns, the person's own conscience will prick him and he will find that it will be easier for the income-tax department to find out what his real income is, whether it is more than that mentioned in his return. It is just possible that he may show his real income. It is difficult for the income-tax department to get at a new person and find out his income and assess him from that angle. Take, for instance, a person who sells a small article like *pan*. There are people who sell it at 5 p. and people who sell at one rupee. I know persons who drive their cars five miles to reach a shop where they pay one rupee or a quarter more and buy a *pan* and enjoy it. I have known a small shop in Kalbadevi in Bombay where a gentleman sells only buttermilk and *Peda*. If you look at the counter you will find coins and notes flying, there is such a huge rush there. So, it is very difficult to assess the income of similar persons because it varies from person to person, situation to situation and quality to quality. If the suggestion of Mr. Gadgil were accepted, we could create a category of people say that all those whose income is, say, more than 2500 or something like that. They would file their returns and then it would be easier for the income-tax department to find whe-

ther the incomes are sizable or, not.

There is one other development. There are a number of income-tax officers who do not have a proper channel for their promotions because the number of persons who could become Commissioners is so small that most of them have to retire as Assistant Commissioners. They retire early from the service and join the legal profession of income-tax practitioners. For a lay man like me, it is always a surprise: how is it that even the class of people who pay income-tax prefers a tribunal to the judiciary, taking a decision. Whenever there are disputes between the assessee and the income-tax officer and the disputes should go to the highest in the income-tax department—they may be independent or may not be independent—even the assessee agree to their decisions. Rarely they go to high courts. Hence the recent expression of opinion by men in high positions in the judiciary that the system of tribunals should be given up, the matter should be processed thoroughly and there should be provision that they may be brought up to courts. I think that is a very healthy provision and if we adopt it, it would be easier for submission of better returns.

14.00 hrs.

The earlier instance I gave indicates that there is a good number of persons, government officers, who were in the income tax department, which who have changed over to the income tax profession. It shows that there is something by which matters are adjusted and thereby real tax, whatever it is, is not collected. Some bargain, some compromise is arrived at and that is why a number of authorities, foreign and Indian, who investigated the tax structure here—even Kaldor—have remarked that there is far greater tax evasion—I am not talking of tax avoidance—in India than in any country similarly placed, whether it is UK or U.S.A. The U.S.A. is quite notorious for evasion of tax, but I think we have beaten them in this regard. Therefore, we have to

[Shri Heda]

find out a proper method by which we can catch them.

A recent development in my home town surprised me, rather intrigued me. There people are taking to cultivation of grape vines. It is a new fashion to have bigger and bigger farms of grapes. No doubt, it is a good industry; if one worked very hard and was careful, he could earn about Rs. 1000, Rs. 2000 or even Rs. 5000 per acre. But I suspect some of them are taking to it so that they can bring their black money and show here the gains in agriculture. Since agriculture is not taxed, they can easily say that by having a farm of 5 or 10 acres, they have earned about Rs. 25,000 or Rs. 1 lakh and thus they can turn black money into white. This is a very easy way they have found out. I suspected this because a number of persons who came into this form of agriculture was such as had no experience or inclination towards agriculture. Some of them were, I believe, from overseas who had only hard cash and who had very good experience of trading, may be export/import. Apart from that, I do not think they have had any type of experience.

So we find that a number of devices are used to evade income tax. Therefore, it is time the Finance Minister applied his mind and came out with a full system. Earlier I had paid him a tribute for devising a system of tax structure in a unique way. I have no doubt that in the course of five or ten years, may be 25 years, the salient features of this tax structure would be adopted even by countries like UK and U.S.A. Therefore, I do hope that while he holds his office, he applies his mind to it and comes forward with another measure more comprehensive by which he would make tax evasion an impossibility.

Dr. M. S. Aney: Foolproof.

Shri Heda: One cannot have anything foolproof, but as far as possible it should be perfect.

So far as this Bill is concerned, the object is very limited. I think the object is very good. It is to overcome an immediate difficulty of procedural delays and avoid unnecessary expenditure and time. Therefore, I give my full support to it.

Shri A. N. Vidyalkar (Hoshiarpur): As my hon. friend preceding me has said, the purpose of this Bill is very limited, and generally we all support it. The only thing I want to say is that in the administration of taxation laws, one principle should be adopted. It should be adopted generally in the administration, but specially in this case one principle must be adopted, that after all, the government officials have to serve the people and they have to make it more convenient for the people to follow the law. Here the purpose of the Bill is that no new notice should be issued. So far as the law is concerned, I want to protect the Government. Because no fresh notice is issued, therefore, the whole recovery proceedings should not be stopped and should not be jeopardised. I agree with that. But so far as the administration is concerned, I would say that most people generally do not know about the procedure. That is the case with even educated people sometimes. They do not understand the complexity of the law and feel the difficulty. I know many MPS find it difficult, they do not know how to proceed, so far as procedure is concerned. Therefore, it is very necessary that in the rules it should be provided that the assessee should be given some notice or some idea as to the total amount they have to pay. Here if the amount is reduced, the Government has no obligation. Our tendency is to arm officials with all the powers and then we try to reduce the obligations. Just as so far as the law is concerned, I do not want to create difficulty for Government in the matter of recovery of the amount

by placing more obligations on Government if the notice is not issued—otherwise it becomes absolutely impossible to effect recovery—in the same way in the matter of procedure and rules, you may provide in the rules that notice should be issued and the assessee should know what is the amount he has to pay. He should be reminded in some form or other about it. In these matters, the administration should take up a helpful attitude. I know that in many cases dues are not paid not because the assessee does not want to pay but because they do not know how to pay it.

In my own case, I can say that last year I sent my returns. Till now I have not received any assessment notice. I sent letter after letter. Still I have had no reply from the ITO. If I can experience this difficulty, there will be many others who will experience the same difficulty. Then sometimes notices come all at once for one, two or three years. The poor people and middle class people cannot pay all at once as demanded in this manner.

Therefore, they should put their own house in order. That is very necessary. There is a lot of confusion in the recovery department. Therefore, while supporting the Bill, I would request the Finance Minister to make rules in such a manner that assessee are given all kinds of help so that those who really want to pay are enabled to pay.

श्री श्रीकार लाल बेरवा (कोटा) : मैं इस बिल का समर्थन करता हूँ। जैसी कि व्यवस्था की गई है डबल नोटिस देना चाहिये। वह ठीक ही है। इसका कारण यह है कि गांवों के अन्दर जो नोटिस का खेल है उसको बहुत बड़े पढ़े लिखे लोग भी नहीं समझ पाते हैं। आपको मालूम नहीं है कि किस किस तरह की अनियमिततायें चलती हैं।

555(Ai) LSD—5.

इस सम्बन्ध में मेरा निवेदन है कि नोटिस जो है वह इंग्लिश में ही नहीं होना चाहिये लेकिन हिन्दी के अन्दर भी वह होना चाहिये, हिन्दी के अन्दर लिख कर इसको भेजा जाना चाहिये ताकि गरीब जनता भी समझ सके कि उस में क्या लिखा हुआ है। गांवों में भी सेठ साहूकार और व्यापारी लोग रहते हैं। आजकल जितना भी कार्य होता है, जितनी भी व्यवस्था होती है वह सारी अंग्रेजी में होती है और इस सब को समझने के लिए लोगों को वकील की मातहतता में जाना पड़ता है। इसके लिए हमारा जो प्रशासन है वह भी बहुत हद तक जिम्मेदार है। अधिकारियों का तथा वकीलों का इस में हिस्सा बंधा रहता है। वकील अधिकारियों से सीधे जा कर सांठगांठ करके फैसला करवा लेते हैं। जिन व्यापारियों की वकीलों के द्वारा अफसरों से सांठगांठ नहीं होती है वे बेचारे मारे जाते हैं, कुचले जाते हैं।

श्री शिवाजीराव शं० देशमुख (परभणी): यह झूठ है।

श्री श्रीकार लाल बेरवा : झूठ नहीं बिल्कुल सत्य है। अपने जिले की बात मैं जानता हूँ। मैं प्रमाण भी दे सकता हूँ। वकील जो है, वे ज्यादा ब्लैक करते हैं (interruptions) वकील लोग ही इस तरह की सांठगांठ करके बीच में ब्लैक करते हैं। आप अगर वकील हों और इस तरह का काम करते हों तो आप भी ब्लैक करते होंगे। अगर शासन अधिकारियों पर अच्छी तरह से नियंत्रण रखे और सजग रहे और इस तरह की बातों की जांच पड़ताल करता रहे कि किस वकील के द्वारा किस अफसर की सांठगांठ है तो यह जो बीमारी है यह काफी हद तक दूर हो सकती है।

गांवों से आदमी को एक बार ही नहीं, दस दस तारीखें दे कर बुलाया जाता है। अगर उससे पांच रुपये इनकम टैक्स का घसूज

[श्री श्रीकार लाल बेरवा]

करना होता है तो पांच दस बार आने जाने में उसके पन्द्रह बीस रुपये खर्च करवा दिये जाते हैं। मैं चाहता हूँ कि अगर किसी व्यापारी से आप को पन्द्रह बीस रुपया लेना है तो उसका फैसला एक ही तारीख में कर दिया जाना चाहिये, बार बार उसको बुलाया नहीं जाना चाहिये। हमारे यहां के व्यापारियों का यह हाल है कि वे बेचारे पेशी भुगतने के लिए जाते हैं और जा कर चार पांच दिन पड़े रहते हैं, वाटियां पकाते रहते हैं और इस तरह से उनके पचास साठ रुपये खर्च हो जाते हैं और बाद में उन पर पांच सात रुपये का टैक्स लगा दिया जाता है। इस तरह की बातें नहीं होनी चाहियें और एक ही तारीख में जो फैसला करना हो, कर दिया जाना चाहिये।

इनकम-टैक्स के बारे में या दूसरे टैक्स के बारे में जितने भी कागजात हों वे सारे हिन्दी में होने चाहियें। नोटिस की जो प्रणाली रही है, इसका मैं समर्थन करता हूँ। जरूर उनका नोटिस दुबारा दिया जाना चाहिये।

Shri T. T. Krishnamachari: Hon. Member Shri Heda who spoke did not speak on the subject of the Bill. He spoke about certain difficulties felt by assesseees, and also on the need for ensuring proper collection by issuing notices to people even though they do not normally fall within the category which has to be taxed. I am grateful to him for his suggestion.

My hon. friend Shri Vidyalkar I do not think quite caught the import of the second part of clause 3 of this measure. This measure only says that where on appeal the decision is in favour of a reduction of the amount due, no fresh notice need be issued. If there is enhancement, sub-clause (1) (a) of clause 3 provides for it, and fresh notice has to be issued. As it

is, even if there is a reduction or any variation in the terms of the assessment to the benefit of the assessee, this sort of thing has to happen. That is why, as I have mentioned, once an appeal is filed, even a frivolous appeal, that means the whole thing is stopped. It is not loaded against the assessee at all. Where the decision has gone against him and the amount is enhanced, then, of course, a fresh notice is given.

We have also made provision to say that notice should be given in regard to the difference of the amount due. Essentially it is a procedural matter. It is not a matter in which you put the assessee in any position of jeopardy. Nor is a law being enacted which is against him. The procedures are changed because there are procedural issues.

The Supreme Court's decision has unfortunately gone in favour of an assessee who has shown continuous intransigence. To this gentleman, Seghu Buchiah Setty, the income-tax officer gave notice under section 22(2) of the old Act on 5th March, 1954. The return was due on 9th April. For nearly one year the assessee did not file a return. The income-tax officer issued a notice under section 22(4) calling for books on 18th March, 1955. The assessee did not turn up. An *ex parte* assessment was made on 23rd March of that year. The demand notice was served on the assessee immediately thereafter. The assessee did not file any application under section 45 asking for permission to withhold payment till the Appellant Assistant Commissioner disposed of the appeal. He merely ignored the income-tax officer's notice of demand. The income-tax officer waited for six months and issued a recovery certificate only in September, 1955.

It is a case of this nature in which a procedural defect has been noted, and the decision in favour of the assessee in this matter opens the flood-

gates in regard to collections, and puts an enormous amount of labour and difficulty and duplication of procedures on the department. From the subject matter of this particular decision, one can say on merits that he is a recalcitrant person.

So, we are only dealing, as I said, with procedures, rather than the law, and I hope my explanation is satisfactory to the hon. Member from Punjab.

I have nothing much more to say in regard to this Bill.

श्री श्रीकार लाल बेरवा : हिन्दी में होगा या नहीं, इसका जवाब नहीं आया है।

योजना मंत्री (श्री ब० रा० भगत) : होगा।

Mr. Deputy-Speaker: The question is:

"That the Bill to provide for the continuation and validation of proceedings in relation to Government dues and matters connected therewith, be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: There are no amendments to the Bill.

The question is:

"Clauses 2 to 7 stand part of the Bill."

The motion was adopted.

Clauses 2 to 7 were added to the Bill.

Mr. Deputy-Speaker: The question is:

"Clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri T. T. Krishnamachari: I beg to move:

"That the Bill be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

EAST PUNJAB AYURVEDIC AND UNANI PRACTITIONERS' (DELHI AMENDMENT) BILL.

The Deputy Minister in the Ministry of Health (Dr. D. S. Raju): I beg to move:*

"That the Bill further to amend the East Punjab Ayurvedic and Unani Practitioners' Act, 1949, as in force in the Union territory of Delhi, be taken into consideration."

The East Punjab Ayurvedic and Unani Practitioners' Act of 1949 as extended to Delhi provides for the constitution of a statutory body called the Board of Ayurvedic and Unani Systems of Medicine, Delhi, for purposes of carrying out the provisions of this Act, which includes, *inter alia*, registration of practitioners of Ayurvedic and Unani systems of medicine and the conduct of examinations in these systems. For these purposes the Board is empowered to make regulations under section 30(1) of the Act, which includes conduct of examinations. So, this Board has got a dual function of conducting examinations in Ayurveda and Unani as well as registering these qualified practitioners. These functions have been in existence for some years now since the Act came into force, but experience has shown that there is some difficulty in working out these programmes, and we found that this arrangement was not very satisfactory. Subsequently some developments

*Moved with the recommendations of the President.