THE TAXATION LAWS (AMENDMENT) BILL, 1973

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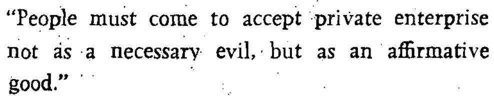

"People must come to accept private enterprise not as a necessary evil, but as an affirmative good."

—Eugene Black

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I

CHARITABLE TRUSTS

"By tradition, private philanthropy in our country has been playing a very special and prominent role in enriching our cultural heritage and in attending to the educational, medical, socio-economic and religious needs of our people. In so doing, it has supplemented the work of a Welfare State." So says the Wanchoo Committee Report.

Though the Committee has described private philanthropy in India in such glowing terms, yet its recommendations pertaining to charitable trusts give the inevitable impression that philanthropy is not a virtue but a vice.

It is true that just as there are black sheep in every class and stratum of society, similarly there are black sheep among philanthropists who do not hesitate to derive benefit for themselves through the device of charitable trusts. However, the fallacy lies in tarnishing every person belonging to that class with the same brush and treating all as sinners or criminals.

At present, the provisions of the Income-tax Act, 1961, pertaining to charitable trusts are extremely stringent in order to prevent their misuse for private or personal gains.

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Sections 11, 12 and 13 deny exemption to a charitable trust if it is not wholly for charitable or religious purposes or if even a little benefit accrues to the author or any trustee of the trust, or any person who has made a substantial contribution to that trust or any relative of such person or any concern in which any such person has a substantial interest. In fact, the provisions, are so harsh that even an illusory or negligible benefit arising to any such person would disentitle the trust to exemption.

The Taxation Laws (Amendment) Bill, 1973, has made far-reaching changes to give effect to the recommendations of the Wanchoo Committee. These changes are bound to affect adversely donations to charitable and religious trusts, and it may not be premature to hazard the guess that hereafter private charitable trusts will only be institutions of the past.

At present, Section 13(1) (b) exempts the income of a charitable trust or institution which was created or established before 1st April 1962 and which is for the benefit of any particular religious community or caste.

This clause is sought to be amended and the exemption so far available to charitable trusts and institutions created before the said date for the benefit of any particular religious community or caste will not be available. Hence, in the case of those trusts which were created before the commencement of the Income-tax Act, 1961, their income will be eligible to tax.

A new clause (bb) is proposed to be inserted in Section 13(1), whereby any income derived from any activity for profit carried on by a charitable trust or institution for the relief of the poor, or for education, or medical relief would be liable to tax.

At present, income arising from any activity for profit is taxable only if such activity is carried on by a charitable trust for the advancement of any object of general public utility. On the other hand, income from activity for the relief of the poor, education and medical relief is exempted from tax even if such activity results in a profit.

Therefore, at present, if the purpose of the trust is relief of the poor, education or medical relief, and no other, the requirements of Section 2(15) which defines "charitable purpose" would be satisfied, although the achievement of that purpose may involve the carrying on of an activity for profit. Thus, if an educational trust in carrying out its purposes sells books at a profit, the purpose of the trust would still be charitable.

However, after the proposed amendment is passed into law, a trust for the relief of the poor, education or medical relief would not be entitled to exemption if the charitable purpose involves the carrying on of an activity for profit. One exception is provided to this rule, viz., if the activity is carried on in the course of the actual carrying out of a primary purpose of the trust or institution, then tax exemption would still be available to such trust or institution.

To illustrate, if a trust is created for medical relief and the trust runs a hospital, the primary purpose of which is to give free or subsidised medical aid to poor and deserving patients, the trust running the hospital would not be denied exemption if a part of the hospital is used as a nursing home for the well-to-do sections of the community to whom high fees are charged resulting in a profit which is used for the benefit of the poorer sections of the community.

Therefore, if the profit-earning activity is carried on in the course of the actual carrying out of the primary purpose of the trust or institution the trust or institution created or established for the relief of the poor, education or medical relief would not be denied tax exemption.

Many charitable trusts and even official organisations raise money through charity shows and film premieres where tickets and programmes are sold at considerable profit in order to utilise such profits for charitable purposes. If this provision is passed into law, it is doubtful whether the income-tax officers will allow such profits to go untaxed. Hence, many charitable trusts which depend on this source of income would be considerably hit.

A difficulty that will arise is in determining as to what activity is carried on in the course of the actual carrying out of a primary purpose of the trust or institution. There is bound to be difference of opinion between the income-tax department and the trustees of the charitable trusts or institutions and hence, considerable litigation is bound to arise entailing a waste of funds meant for charitable purposes.

Another obnoxious provision of this Amendment Bill is in the case of anonymous donations. Clause (d) is sought to be inserted in Section 13(1), whereby any voluntary contribution received by a trust or institution created or established wholly for a charitable purpose would be taxed at the flat rate of 65 per cent where the identity of the donor or donors making the voluntary contributions is not established to the satisfaction of the income-tax officer.

This is a wholly unjust and pernicious provision which is bound to eat into the income of charitable trusts or institutions which depend for their existence and for the carrying on of their charitable activities on donations made by the general public. Every charitable trust or institution maintains boxes so that members of the public may contribute their mite for charitable purposes. Such box collections would henceforth be taxed at the savage rate of 65 per cent. This is because in the case of box collections it would be impossible for the trustees of a trust or institution to disclose the identity of the persons who have made such voluntary contributions.

For example, on Flag Days, large amounts are collected from the general public through boxes circulated by volunteers in public places. Would such collections now become taxable at the rate of 65 per cent?

Similarly, large amounts are collected for the blind and hundreds of thousands of people contribute their mite for the benefit and welfare of the blind. The Government now intends to become a major beneficiary of such donations from the public whose intention is to help the deserving and the handicapped.

Needless to say this provision, if passed into law, would create the greatest hardship to deserving charitable trusts and institutions which depend to a substantial extent on donations gathered through box collections from the members of the public. To tax such funds at the rate of 65 per cent is, indeed, a crime against society!

Another provision of the Bill which is bound to reduce substantially the income of charitable trusts and institutions, is clause (e) which is sought to be inserted in Section 13(1) of the Act. Under this clause, in the case of trusts for charitable or religious purposes, if any funds of the trusts are or continue to remain, invested after 31st March 1978, in any concern (including a company) which is carrying on any business, the income arising from such funds would not be entitled to exemption. The only exception is where the funds are invested in any concerns which are owned or controlled by the Government.

This provision is bound to diminish drastically the income of charitable trusts and institutions, because Government concerns or companies either do not make any profits or give returns which are extremely low and insignificant compared with the returns given by concerns and companies in the private sector. Therefore, the earnings of charitable trusts and institutions are bound to be reduced by at least 50 per cent, if not more, and to that extent the needy and the deserving will suffer.

This provision highlights the inefficiency and incompetence of Government-owned or controlled concerns and companies. It is clear beyond doubt that these concerns and companies being unable to command the confidence of the general public and attract funds from the capital market are now using this device to force charitable trusts and institutions to invest in Government concerns and companies in which otherwise no prudent or reasonable man would think of investing for a reasonable return.

The ineluctable consequence of this provision would be that if the Government concerns or companies are unable to make a profit (as is generally the case), the charitable trusts and institutions will be starved of income and a

calamitous situation will arise in the case of educational institutions, hospitals and sanatoria. Some of them may even have to be closed down where the trust stipulates that no amount can be drawn from the corpus of the trust but only the income from the property held in trust can be used for charitable purposes.

This is one more glaring instance of the Government resorting to every and any means, however repugnant and devious they may be, to secure funds for its inefficiently-run units.

Clauses (a) and (b) of Section 11(1) of the Act have been amended in order to permit trusts wholly for charitable or religious purposes to accumulate or set apart their income up to 25 per cent of the income from property held under trust. In computing the 25 per cent of the income which may be accumulated or set apart, voluntary contributions would be deemed to be part of the income.

It may be noted that at present it is necessary to spend the entire income during the relevant previous year or three months following the relevant previous year in order to be entitled to the exemption. This caused tremendous hardship to trusts, especially where the income was not actually received though accrued for the relevant assessment year. Therefore, the Wanchoo Committee recommended that in order to alleviate this hardship up to 25 per cent of the income should be allowed to be accumulated or set apart.

The Taxation Laws (Amendment) Bill further provides that the other 75 per cent of the income may be spent either during the previous year or, at the option of the trustees, during the next previous year. This option has to be exercised in writing before the expiry of the time allowed for filing a return under Section 139(1) or (2), whether fixed originally or on extension for furnishing a return of income.

Where income has accrued but has not been received, the trustees are given the option to spend 75 per cent of it during the previous year in which it is received or during the succeeding previous year.

At present, income of a charitable or religious trust is allowed to be accumulated if the conditions mentioned in Section 11(2) of the Act are fulfilled. Tax exemption in such cases would not be denied. However, under Section 11(3) the trust would lose the benefit of exemption if the income is applied to purposes other than charitable or religious or ceases to remain invested in any specified securities or the income is not utilised for the purpose for which it is accumulated or set apart.

Section 11(2) and (3) is sought to be amended whereby income allowed to be accumulated or set apart under Section 11(2) would not later be denied exemption if, due to circumstances beyond the control of the trustees, it cannot be spent for the purpose for which it was accumulated or set apart but is spent on any other charitable or religious purpose. However, such charitable or religious purpose should be in conformity with the objects of the trust and the income accumulated can be spent for such other purposes only with the permission of the income-tax officer.

Two minor changes in the provisions relating to charitable trusts and institutions are made in Section 13(3)(b) and 80-G(1).

As mentioned earlier, if the income of a charitable trust or institution is spent for the benefit of any person who has made a substantial contribution to the trust or institution, the trust or institution would not be entitled to the tax exemption. "Substantial contribution" was not defined and, therefore, there was uncertainty about the application of this provision.

The Amendment Bill now makes it clear that "substantial contribution" means total contribution up to the end of the relevant previous year exceeding Rs. 5,000. Therefore, if a person who has contributed more than Rs. 5,000 derives any benefit from such trust or institution, the provisions of Section 13 will be attracted and such trust or institution will be denied exemption in respect of its income.

Section 80-G affords relief to those who make donations to charitable trusts or institutions. At present, the relief

allowed is 55 per cent of the donations in case of assessees other than companies and 50 per cent in case of donations made by companies.

The Bill proposes to grant a uniform rate of relief of 50 per cent in case of all assessees and, therefore, assessees other than companies will be entitled to relief of only 50 per cent against 55 per cent available so far.

To sum up, taking a very objective view of the provisions of the Taxation Laws (Amendment) Bill, 1973, charitable trusts and institutions will be drastically hit. Not only will their income be diminished substantially on account of the low rate of return from Government concerns and companies but even some sources of income will dry up, causing considerable hardship to the needy and deserving for whom the trusts or institutions have been established.

II

ADMINISTRATION OF LAWS

Many years ago in the leading case of *Semayne* v. *Gresham* the Court held that the house of everyone is to him as his castle and fortress as well for his defence, as for his repose. The laws in India have always been based on the ratio of this principle.

However, since the last 12 years such wide and coercive powers have been given to income-tax officers that this important principle which believes in the inviolability of one's house has been trammelled in the dust.

The Amendment Bill seeks to give still more powers to the Income-tax Department in the hope that they would give a more potent weapon for unearthing black money.

It is hardly realised that the search and seizure would merely help in the detection of black money; it would not prevent the creation or the coming into existence of illegal

assets. If tax evasion and black money are to be rooted out of our economic system, it is absolutely imperative that the very source of black money should be eradicated and tax evasion prevented at the stage of assessment itself. Unless this is realised, no amount of penalty, however severe it may be, nor vesting Draconian powers with the tax authorities is going to help in destroying the foundations on which black money is created and multiplied.

The Bill seeks to make changes in Sections 116 and 117 of the Income-tax Act, 1961, which redesignate certain officers of the Department and to insert a new Section 125A which grants jurisdiction over areas, cases, etc., to the Deputy Commissioner and the income-tax officers under him.

One of the more important amendments relates to Section 132 of the Act which deals with the power of search and seizure. So far search and seizure could be authorised only by the Director of Inspection and the Commissioner. It is now proposed to enable such Deputy Commissioners and Deputy Directors of Inspection also as may be authorised by the Central Board to carry out search and seizure. Moreover, the power of search is being extended to persons, vehicles, vessels and aircraft.

The Commissioner of Income-tax is being empowered to authorise search and seizure, irrespective of whether the person with respect to whom the search is authorised is assessed in his jurisdiction or not or whether the building or any other place to be searched is within or outside his jurisdiction.

If in the course of search certain assets, account books and documents are found at the premises of an assessee under the current law the onus is on the Department to prove that they belong to the assessee and relate to his business. A provision is sought to be made which raises a rebuttable presumption that the assets, books of account, etc. belong to the assessee, that their contents are true, that the signatures and handwritings are of the persons who can reasonably be assumed to have signed or written the books of account, documents, etc.

At present, a summary assessment can be made by the Income-tax Officer only with the previous approval of the Commissioner. However, the Bill proposes to empower Deputy Commissioners to give such approvals and not the Commissioner.

Under Section 132(5) of the Act, as it now stands, the income-tax officer is required to make a summary assessment within a period of 90 days of the search and seizure and to retain such assets as will be sufficient to satisfy the existing liabilities and the tax liability on the estimated undisclosed income.

The Bill now proposes to enlarge the scope of the above provision so as to permit the income-tax officer to retain the seized assets which would be sufficient not only to cover the tax liability but also to cover the penalty and interest relating to the undisclosed income.

The Bill further seeks to provide that the authorised officer, if he has no jurisdiction over the person whose books of account have been seized by him, shall hand over the books of account to the officer having jurisdiction over the assessee within a period of 15 days and thereafter such officer having jurisdiction will have the power to investigate the case.

The Bill seeks to re-number the present Section 132A, which relates to application of retained assets, as Section 132B, and a new Section 132A, is sought to be inserted.

The new Section 132A seeks to make a new provision in the Act to the effect that where any books of account or documents or assets have been taken into custody by any officer or authority under any other law, the Director of Inspection or the Commissioner may in the circumstances covered by the provisions of Section 132, require such officer or authority to deliver such books of account, documents or assets to any of the Officers authorised by the Director of Inspection or the Commissioner.

At present Section 133A gives wide powers of survey to an income-tax officer or any inspector of income-tax authorised by the income-tax officer in this behalf. The

Bill seeks to extend the present powers of survey and make them available to deputy commissioners and assistant directors of inspection.

The income-tax authorities are also empowered to check cash, stocks or other valuables found on the business premises as well as to record statements of any persons in the business premises. The assessee is bound to give all facilities to enable the authority to visit any other premises besides the business premises where the assessee himself states that any part of his books of account, cash, stocks, etc. are kept.

The income-tax authorities may demand the furnishing of information which, according to them, is useful for, or relevant to any proceeding under the income-tax law.

They are also to be given the power to collect information and record statements of persons concerned at any time after an event, function on ceremony, but well before the stage of assessment proceedings in the following year. This power is to be exercised by the authorities if they are of the opinion that having regard to the nature, scale or extent of the expenditure incurred it is necessary to do so.

The power to collect evidence and information is being given in order to gather information about ostentatious expenditure incurred on an event, function or ceremony. Thus, under Section 133A(5), the authorities are sought to be given the power to question the assessees or any other person, record statements made by them and collect information regarding the expenditure incurred at any function or event or any ceremony, be it for marriage or other religious purposes.

It may be noted that this enquiry and gathering of information relate to ostentatious expenditure. Such ostentatious expenditure may be incurred, not necessarily out of black or unaccounted money but may also be incurred out of money which is legally accounted for. Thus, this provision would not only affect those who have black money, but also those who have fully disclosed their assets and income. The mere display of expenditure which, according to the tax

authorities, is ostentatious, would subject the assessee or any other person which would include his guests at the ceremony, to questioning and interrogation.

It is wondered as to whether the tax authorities would have the courage to question members of the ruling party and others who enjoy the patronage of the powers that be when they hold functions which are known to be on a scale that no industrialist or capitalist in this country is capable of holding.

A new Section 139A is proposed to be introduced to provide for permanent account numbers. It may be noted that the work of allotting permanent account numbers was started more than a year ago, though no provision exists to that effect.

Under the new Section 139A, every person who has a taxable income, and who has not been allotted any permanent account number so far, is within the prescribed time required to apply to the Income-tax Officer for allotment of such number. Moreover, every person carrying on business whose sales, turnover etc. are likely to exceed Rs. 50,000 in any year and who has so far not been allotted a number, would also be required to apply for the allotment of such number within the prescribed time. Permanent account numbers may also be allotted to any other person by whom the tax is payable.

Once a permanent account number is allotted the person concerned would have to quote it in all his returns, or in any correspondence with any income-tax authority and in all documents relating to such transactions as may be prescribed for the benefit of the Department.

The Bill seeks to amend Section 140 of the Act so as to provide that in the case of a company the return of income is to be signed by the managing director and; failing him by any other director or any other person who is for the time being mainly in charge of the affairs of the company.

Likewise, in the case of a firm the return is to be signed by the managing partner or where there is no such manag-

ing partner, by any partner who for the time being is mainly in charge of the affairs of the firm.

These provisions are sought to be made in order to hold such persons liable for any mistake made advertently or inadvertently and for any omission or any wrong statement made in the return of income.

At present tax is payable on self-assessment within 30 days of the filing of the return under Section 140A of the Act. The Bill now seeks to amend this section in order to make it obligatory for the payment of tax due on assessment at or before the time the return is filed and the return should be accompanied by the receipt from the Reserve Bank as proof of the payment of tax.

Two new sections, Sections 144A and 144B, are sought to be inserted. These sections relate to the power of the Deputy Commissioner (Assessment) to issue directions to make orders of assessment in certain cases.

The new Section 144A seeks to authorise the Deputy Commissioner (Assessment) to call for the records of a case either on his own motion or on a reference made by the income-tax officer or on an application made by the assessee before an assessment is finalised and to issue such directions as he considers fit in the circumstances of the case for completion of the assessment.

Opportunity to the assessee is sought to be provided for if the directions proposed to be issued are prejudicial to him. It has been made clear that directions which merely lay down the lines on which an investigation is to be made are not to be treated as prejudicial to the assessee.

The new Section 144B seeks to provide that where an income-tax officer proposes to make additions or disallowances exceeding a prescribed amount, which shall in no case be less than Rs. 25,000 he shall send a draft assessment order to the assessee and where the assessee objects to the assessment being made on the basis of the draft order, he may apply to the Deputy Commissioner (Assessment) who after hearing the assessee and the income-tax officer, shall

pass the final order of assessment and impose penalties under Section 271 and 273 of the Act, wherever called for.

Power of search and seizure has also been given to the Director of Inspection, the Deputy Director, the Commissioner and the Deputy Commissioner (Assessment), as authorised by the Central Board, under Section 37A of the Wealth-tax Act, 1957, which is proposed to be substituted. This provision is similar to the one under Section 132 of the Income-tax Act.

Chapter XIX-A and Chapter V-A are sought to be inserted in the Income-tax Act and the Wealth-tax Act respectively in order to deal with the settlements of cases as recommended by the Wanchoo Committee.

The provisions proposed are mainly intended to give statutory basis for settlement of cases which are necessitated in the interest of the revenue. However, settlements would not be allowed in cases where concealment of income or wealth is established before the making of an application for settlement.

Settlements are to be made by a committee of not less than three members of the Central Board of Direct Taxes. An application for settlement once made will not be allowed to be withdrawn.

To sum up, the power of search and seizure with which the income-tax and wealth-tax authorities are sought to be armed, are of an extremely rigorous nature. However, this power is so coercive that unless it is used very discreetly and only in essential cases, it is likely that the abuse of such power would grossly interfere with every citizen's right to privacy and the sanctity of his home.

It may be noted that the Wanchoo Committee has recommended that tax officers who misuse their power or exercise it for a collateral reason should be penalised severely. Similarly, informers who give false information to the Income-tax Department on the basis of which raids are carried out, should be penalised under Section 182 of the Indian Penal Code.

Unless these preventive measures are taken so that the power of search and seizure is exercised *bona fide* and only in appropriate cases, the shadow of a police state may lengthen across the path of most citizens who do not enjoy the patronage of the powers-that-be. We may then be heading for a 'forward-looking' police state.

III

BLACK MONEY

The Wanchoo Committee was asked by a resolution of the Government dated March 2, 1970 to recommend concrete and effective measures to unearth black money and to prevent its proliferation through tax evasion.

In order to be able to suggest remedial measures, the committee thought it necessary to determine and understand the causes which have led to this malaise of black money and tax evasion.

The committee came to the conclusion that the primary cause of tax evasion was the high rates of taxation under the direct tax laws. This conclusion was arrived at on the basis of the opinion voiced by a majority of the persons who replied to the questionnaire sent by the committee or who gave evidence before it.

The majority of the persons who subscribed to this view included not only economists and professors, but also officers of the Income-tax Department itself. Even those who did not concede that high rates led to evasion, admitted that high rates did make tax evasion extremely "attractive and profitable."

The committee observed: "When the marginal rate of taxation is as high as 97.75 per cent the net profit on concealment can be as much as 4,300 per cent of the after-tax income. The implication of 97.75 per cent income-tax is that it is more profitable at a certain level of income to evade tax on Rs. 30 than to earn honestly Rs. 1,000. We will not be surprised that placed in such a situation, it would be difficult for a person to resist the temptation to evade taxes."

Thus, the committee has succinctly brought to light the rewards of tax evasion.

Besides, the committee has also found that tax evasion rises with the rising rates of taxation and that high rates of taxation are "tolerable or are tolerated mainly because of the widespread evasion and avoidance that take place. To many, they provide adequate justification for resisting the attempt of the State to snatch away almost the entire fruits of their labour."

In fact, a vicious circle has been created by the high rates of taxation and evasion. The high rates encourage tax evasion and such evasion gives justification to the Government to increase the tax rates. However, now the limit has been reached and no increase is possible, though evasion may become more widespread.

Besides, with the additions made to the returned income on account of estimates of profits or disallowance of expenses, the tax would far exceed the returned income.

Moreover, even without such disallowances, the effective marginal rates of income-tax and wealth-tax put together would pierce the 100 per cent barrier in many cases, because the marginal rate of wealth-tax goes up to as high as 15 per cent. It is worthwhile noting that levy of wealth-tax even at the rate of 1 per cent is equivalent to 10 per cent additional income-tax assuming that the return on investment is 10 per cent.

The Government has always justified high rates of taxation on the ground that they narrow down or reduce

the inequalities or disparities of income and wealth. To this point, the committee has given a fitting reply.

It says: "In theory, this might be a valid proposition, but in practice, high rates of taxation are apt to make the rich richer and the poor poorer, thereby widening the gap between the two classes. Today, a person in the income bracket of over Rs. 2 lakhs, who earns an extra Rs. 1,000 and declares it honestly in his return of income, is worse off under our tax system than an unscrupulous person who evades tax on only Rs. 30. In such a situation, honesty becomes the first casualty and not many would find it easy to resist the temptation."

Another reason why the committee notes that high rates of taxation widen the gap between the rich and the poor is that high rates are a disincentive to productive effort.

The ineluctable consequence of this is that those who have the capacity to produce or earn income, stop their productive activity after reaching a certain level of income or they resort to tax evasion.

In other words, beyond a point these high rates of taxation have a dampening effect on hard work and honest labour. This has a serious repercussion on productive activity which in turn accentuates the price spiral and to that extent impoverishes the poor and middle-class sections.

Year after year the Government exhorts the people to tighten their belts and save and invest more in productive channels so as to accelerate capital formation in the country. The committee has observed that high marginal rates of taxation "erode the capacity and sap the incentive to save and invest."

Whilst considering the capacity to save one should not forget the impact of inflation which is taking place in this country at an alarming rate. In fact, taking into account the influence of taxation and inflation put together, it is impossible for an honest man to save even a negligible amount.

When one takes into account both these factors, then even if a person has doubled his income during the last 10 years, he would still be worse off than before because in real terms the value of the rupee has fallen by more than half. Hence many are literally forced to resort to evasion just to make both ends meet.

The committee has also highlighted the effect of high rates of taxation on consumption and expenditure. It has come to the conclusion that they inevitably lead to wasteful consumption expenditures, because evaded income is more often spent as it cannot be invested in official channels.

Besides, there is the tendency to spend more when expenses are allowable in the computation of income, because in such cases the real effect is that a substantial part of the expenditure is subsidised by the Government, e.g., if the rate at which a company pays tax is 65 per cent then 65 per cent of the expenditure is borne by the Government and only 35 per cent of it is actually paid by the assessee.

In the case of individuals like businessmen and professionals whose income exceeds Rs. 2 lakhs, since the tax at such levels is 97.75 per cent, for every thousand rupees of expenditure incurred the Government subsidises it to the extent of Rs. 977.50 and only Rs. 22.50 is borne by the assessee. Therefore, it is clear that high rates of taxes can hit the Government equally hard by way of a lower collection of revenue.

For these reasons, the committee made its most important recommendation, namely, "having considered the matter in all its aspects, we recommend that the maximum marginal rate of income-tax, including surcharge, should be brought down from its present level of 97.75 per cent to 75 per cent. We further recommend that some reduction in tax rates be also given at the middle and lower levels. In order to create an impact, the reduction in the rates of taxation should be at one stroke."

It is really unfortunate that the Government has contemptuously ignored the committee's main recommendation which is the very bed-rock on which its report is based. It is clear beyond the shadow of a doubt that tax evasion will not diminish when its rewards continue to remain extremely attractive.

The Government, instead of learning from its mistakes and taking heed of the advice given by experts of its own choice, has lost a golden opportunity to root out the scourge of tax evasion and black money.

I now turn to the provisions of the Bill regarding penalties under the Income-tax, Wealth-tax and Gift-tax Acts. It is curious, though not unexpected, that the Government, having ignored the main recommendation of the committee, has accepted most of the recommendations pertaining to penalties. In fact, the Government has amended almost all the Sections from Section 271 to Section 280 of the Income-tax Act, 1961, which deal with penalties and prosecutions.

Taking up Section 271 first, the most important change sought to be made is that the basis for levying penalty for concealment of income is being changed from income to the tax evaded on account of concealment. Under the proposed amendment, the minimum penalty will be equal to the tax and the maximum to twice the tax sought to be evaded.

Another amendment is that non-filing of returns of income within the normal period of limitation by persons who have not yet been assessed will be treated as concealment of income. Further, non-filing or belated filing of returns by trustees of charitable or religious trusts who are required to file returns under Section 139(4A) of the Income-tax Act, will attract penalty not exceeding 1 per cent of the total income of the trust for each year of default.

A provision is being enacted to the effect that where any deposit, investment, etc., made in any year is sought

to be explained with reference to any additions made in earlier assessments in respect of which no penalty has been imposed, the taxpayer would become liable to penalty for concealment in respect of the concerned additions made in the earlier years.

Moreover, if in respect of material facts the assessee furnishes no explanation, or he cannot substantiate the explanation offered by him, or the explanation furnished is false, the income is deemed to be his concealed income. The present Explanation to Section 271(1)(c) is sought to be omitted as recommended by the Committee.

A new Section 271A is proposed to be inserted to provide for penalty for failure to keep and maintain books of account, etc., and also for not retaining them for the prescribed period.

Two new sections, Sections 272A and 272B, are also sought to be inserted. Under Section 272A, penalty is provided for failure to answer questions, sign statements, etc. Section 272B seeks to impose penalty for contravening the provisions regarding permanent account numbers.

Sub-sections (4A) and (4B) of Section 271 are sought to be omitted and in their place Section 273A is being introduced. Under Section 273A, in addition to the power to reduce or waive penalties, power is also being given to reduce or waive interest charges.

Three new sections, Sections 276B, 276C and 276CC, are also sought to be introduced. These sections provide for punishment for failure to deduct or pay tax, wilful attempt to evade tax, etc., and failure to furnish returns of income, respectively.

These provisions give effect to the recommendations made by the Law Commission in its 47th report on the trial and punishment of social and economic offences.

The amendment to Sections 277 and 278 provide for punishment for false statement in verification or for abetment of a false return respectively. The punishment proposed in these sections is also in accordance with the recommendations of the Law Commission.

Sections 278B and 278C, which are also proposed to be introduced, make provisions for dealing with offences by companies and by Hindu undivided families respectively.

Another new Section 278D makes provision regarding presumption as to assets, books of account, etc., in certain cases.

Section 279A is sought to be inserted to make certain offence non-cognisable.

Similar amendments are proposed to be made to the penalty provisions of the Wealth-tax Act, 1957, the most important being that the basis of levy of penalty for concealment of wealth is changed from wealth to tax.

Another important change proposed is that the maximum penalty which at present is equal to twice the tax sought to be evaded, is now increased to five times the tax sought to be evaded.

Another provision that will attract penalty under the Wealth-tax Act is where the value of any asset returned by the assessee is less than 70 per cent of the value of such asset determined on assessment. In such a case the assessee will be deemed to have furnished inaccurate particulars of such asset unless he proves that the value of the asset returned by him is correct.

Sub-sections (2A) and (2B) of Section 18 of the Wealth-tax Act pertaining to reduction or waiver of penalties are sought to be omitted as a consequence of a new provision for reduction or waiver of penalty sought to be made in the new provision, Section 18B.

Under clauses (i) and (iii) of Section 18(1), the maximum penalty for failure to furnish the return of wealth within the normal period of limitation for completion of assessment is increased from 100 per cent to 500 per cent of the tax sought to be evaded.

Under the Gift-tax Act, 1958, amendments are proposed in the penal provisions which are similar to those under the Income-tax Act.

Two new Sections 35A and 35B seek to make provisions on the lines of the new Sections 278B and 278C sought to be introduced in the Income-tax Act.

Having gone through the mass of new amendments proposed, the crucial question that remains to be asked is: Will these penal provisions reduce or mitigate the evil of tax evasion or in any way deter an assessee from evading taxes? In my opinion, the answer to this question is clearly in the negative.

It is inconceivable that these penalties are going to deter an assessee from evading taxes when the rewards of tax evasion are immeasurably more attractive. As long as the benefits gained by tax evasion outweigh the disadvantages, tax evasion will continue unabated.

One is reminded of what is going on in other countries where worse situation exists. In some of the countries where no citizen is allowed to possess foreign currencies of the free world and where a death penalty is prescribed for breach of such law, every tourist to those countries comes across people who are prepared to buy foreign currencies at a very high premium.

The point that arises is that the people are not deterred by even the death penalty in countries where there is a secret police and the movements of every citizen are watch-

ed. This clearly shows that no punishment is enough to deter a man from breaking laws which go against basic human nature, taking into account the fact that the acquisitive instinct in man is as powerful as the instinct for survival, if not more.

The Wanchoo Committee itself has observed in effect that no amount of penalty is going to deter any assessee so long as tax evasion remains lucrative.

It says: "We are convinced that high marginal rates of taxation are a powerful contributory factor towards evasion inasmuch as they make the fruits of evasion so attractive that the less scrupulous persons would consider the incidental risks worth taking."

In spite of this sound piece of advice the Government has allowed the tax rates to remain at their confiscatory levels in the hope that the penalties alone will be sufficient to deter the tax evaders. Thus, hope has triumphed over experience and expert advice. Only a miracle will translate this hope into reality.

The views expressed in this booklet are not necessarily the views of the Forum of Free Enterprise.

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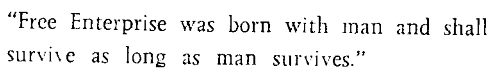

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—A. D. Shroff
(1899-1965)
Founder-President,
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