

MR. CHAIRMAN: The question is:

"That the Bill be returned."

- The motion was adopted.

THE INDIAN INCOME-TAX (AMENDMENT) BILL, 1959

THE MINISTER OF REVENUE AND
CIVIL EXPENDITURE (DR. B.
GOPALA REDDI): Sir, I beg to move:

"That the Bill further to amend
the Indian Income-tax Act, 1922, as
passed by the Lok Sabha, be taken
into consideration."

[MR. DEPUTY CHAIRMAN in the Chair.]

Sir, this Bill seeks to replace the
Indian Income-tax (Amendment)
Ordinance, 1959, which was promul-
gated on the 17th January, 1959.

Before proceeding to explain the
provisions of the Bill, I seek the in-
dulgence of the House to narrate the
circumstances which necessitated the
promulgation of this Ordinance. By
a judgment delivered on the 19th
November, 1958, the Supreme Court
held that the proceedings completed
under the Taxation on Income (In-
vestigation Commission) Act, 1947, on
or after the 26th January, 1950, re-
sulting in settlements were *ultra vires*
of the Constitution. This judgement
affected a total number of 516 cases
settled by the Commission after the
26th January, 1950, involving a demand
of Rs. 17.55 crores of which Rs. 8.60
crores had been collected. In view of
this judgment, the Department could
not proceed with the recovery of the
amounts outstanding as per the terms
of the settlements. Moreover, even
the amounts which had already been
collected from the assesseees concern-
ed and the securities obtained by the
Government as guarantee for the dis-
charge of the uncollected portion of
the taxes under the settlements were
in danger of being claimed back by
the assesseees. Indeed, immediately
after the pronouncement of the judg-
ment, some persons put in claims for
refund. The only way to meet the

situation was to reopen the cases and
make re-assessments under the normal
provisions of the Income Tax Act, i.e.,
under section 34 which deals with
assessments of escaped incomes. At
the same time, it was necessary to
take powers to retain the taxes al-
ready paid on these admitted amounts
of concealment for set-off against the
tax that might be found due on com-
pletion of the fresh proceedings. How-
ever, the Attorney General advised
for the reasons I shall state presently
that before taking steps to issue notic-
es under section 34, it would be neces-
sary so to amend section 34 as to
clarify that that section as amended
by the Finance Act of 1956, was re-
trospective in operation. As the mat-
ter was one of extreme urgency,
Government advised the President to
promulgate the Ordinance.

Coming to the specific provisions of
the Bill, hon. Members are no doubt
aware that until 1956, there was a
time limit of eight years for reopen-
ing cases of concealment under sec-
tion 34. But, in 1956, the section was
amended removing this time limit for
re-assessing cases involving substan-
tial tax evasion, that is Rs. 1 lakh or
more. Hon. Members may also re-
call that that amendment was made
in circumstances similar to the one
we are facing now. The Supreme
Court had delivered a judgment in
December, 1955, declaring invalid all
the cases disposed of by the Investi-
gation Commission after 26th January
1950 on what might compendiously
be called 'Investigation basis', that
is, where the assesseees had
not agreed to the deter-
mination of the concealed income by
the Commission and, in consequence,
the concealed income had to be asses-
sed by resort to regular assessment
proceedings. By this time, the Taxa-
tion Enquiry Commission had also
made its report wherein it recom-
mended that the time limit for re-
opening should not apply to cases
involving deliberate concealment.
These two factors led to the amend-
ment of section 34 in 1956, by which
it was laid down that in cases where
the concealment involved was Rs. 1

lakh or more, the time limit of eight years would not bar the Department from initiating proceedings against the assessee provided that no case would be allowed to be re-opened for years earlier than the year 1940-41. Interpreting these provisions recently, the Calcutta High Court has held that the amended section cannot be applied to assessments which had become more than eight years old on the 1st April, 1956, in the absence of express provision to that effect in the Statute itself. In view of this decision, Government were advised that it would be necessary so to amend section 34 as to place the question of its retrospective operation beyond any doubt. Clause 2 of the Bill which seeks to insert a new sub-section (4) in section 34 clarifies this position. Further, clause 4 of the Bill validates the proceedings which might have already been initiated under section 34 as it stands now.

The second main provision of this Bill is clause 3 which seeks to insert a new section, namely 49EE, in the Income Tax Act. The object of this section is to enable the Income Tax Department to retain the monies and securities which are already with it in partial or full satisfaction of the demands arising from the original settlements. I may state here that about 50 per cent. of the amounts covered by the settlements have been realised, and for the balance, securities have been deposited with the Department by the assessee. These monies and securities relate to income admittedly concealed by the assessee from the Department. The fresh proceedings now proposed, when completed, will result in the determination of concealed income which will be more or less the same as formed the basis of the impugned settlements. It is, therefore, necessary to provide for the retention of the monies already collected for being set off against the fresh demands and also to retain the securities to enable the Government to realise the amounts still outstanding. This is precisely what the new

section 49EE seeks to ensure. Government is empowered to retain the monies and securities until the completion of assessments in cases where notices under section 34 have already been issued, and for two years in other cases. Within these two years, Government would be able to complete departmental examination of all the affected cases for the issue of notices under section 34. As a safeguard to the assessee, it has been provided that suits or legal proceeding which they could have filed within these two years, but for the provisions in the proposed section, will get the benefit of an extension by two years of the period of limitation.

With these words, Sir, I commend the Bill to the House for consideration.

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill further to amend the Indian Income-tax Act, 1922, as passed by the Lok Sabha, be taken into consideration."

SHRI BHUPESH GUPTA (West Bengal): Mr. Deputy Chairman. I would like to make some observations in connection with the Bill. I make it clear right at the beginning that whenever Government requires more powers in order to tighten the arrangements for the collection of income-tax arrears from the assessee or from people in respect of previous years, we are always ready and helpful. There is no question of difference of opinion or opposition to it so long as it is intended to strengthen income-tax collections in the country. But, Sir, from time to time, we find that lacunae appear in the law; in the light of experience we come to know that the present law is not adequate from the point of view of realisation of income-tax. Here also we have found out certain lacunae, partly through experience but mostly through the courts as a result of which it has become necessary to have a measure of the kind that is before us now. The problem is not one of piecemeal amendment of the Act.

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Well, loopholes appear, they come to light and we have to plug them. But then what is important today is to go into this whole question and see how we can overhaul the present income-tax legislation and also the machinery charged with the realisation and collection of income-tax in the country. That is the basic problem that we must face.

In this connection I find that difficulties arise not merely from the law that we pass here but also from the Constitution itself. As will be seen from experience, these assesseees, especially the big business and big people, very often have taken cover under the Constitution and gone to court to frustrate the collection of income-tax from them. That is to say, they function under certain articles of the Constitution. I am not going into the merits or demerits of those articles at this stage but if certain provisions of the Constitution were to stand in the way of realisation of income-tax then it is time that we considered the necessary amendments to the Constitution. We have not been averse to amending the Constitution whenever it has become necessary and why we should not do so now, I do not see. That is a question for the Government to consider.

Now, this Bill seeks to amend certain provisions of the Income-tax Act and it has become necessary because of some court decrees. I do not know how far we can get on that way. It seems that the authorities do not see beyond their nose. It is only when they have been baulked by the big business and professional income-tax evaders do they realise that something has to be done, whereas what is essential in this context, is to strike them first, take them unawares—those prospective tax-evaders. Apart from this, the first fact that has to be remembered is that arrears of income-tax in the country today amount to about Rs. 280 crores or so. It may be a little more or a little less but why is this money not being col-

lected? These are arrears calculated arrears, and they are not being collected. Am I to understand that merely by passing a measure of this kind we will be able to recover either the concealed things or even the things that have been traced and assessed? I do not think so. They always find other ways of evading. What do these tax-evaders, especially the big people, do? When the time of assessment comes, they indulge in all kinds of manipulation and then they go to the courts of law and when the time of realisation comes you find that many of them have already partitioned or divided their property and carried out all kinds of transactions so that you do not have anything to touch or if you have anything to touch, it is not adequate to meet the demands of the Income-tax Department.

Now, I find according to the official figures on 1st April 1957 there were 1,09,637 cases pending. On 1st February 1958 the number went down to 80,329. It has been reduced according to them by 26·7 per cent or so but even then so many cases are pending. The hon. Minister said that the Department has to be expanded. I understand the Income-tax Department has been considerably expanded but why are there so many pending cases? There should be some explanation because I do not find any explanation from what they said on the subject.

Here again I should like to point out that the Government under estimates concealment and evasion and I think if Mr. Mudaliar will speak, he will draw a fine distinction between what he calls avoidance and evasion. I was very much interested in that discourse. He is a learned man and naturally he spoke in a learned manner. To me, a man of common clay, who pays a few rupees a year as income-tax . . .

DR. A. R. MUDALIAR (Madras): Very uncommon clay.

SHRI BHUPESH GUPTA: . . . this fineness and subtlety is something which is somewhat incomprehensible.

Yes, I can understand his point. If I evade it, my guilt is of one type and if I avoid it, my guilt is of another type. But for me whether it is evasion or avoidance, the exchequer loses. Therefore, I would like the hon. Minister to go after both these categories—those who avoid and those who evade. The distinction is hardly of any practical import even though legally it may have some meaning from the point of view of realisation of income-tax. I find the same persons sometimes evade and sometimes avoid and very often one does both. Evader is an avoider and avoider is evader. That is how the big business functions. And the hide and seek game that is going on between them on the one hand and the hon. Minister on the other makes it somewhat annoying. Is it not possible for the Government to devise proper measures and build up an effective machinery and to utilise that power and the instrument so that we can get at the big business and collect all the income-tax? As far as officers are concerned and as far as we who are here are concerned, the tax is deducted. I do not know about Mr. Mudaliar; he has got other sources of income and all good luck to him and I have no doubt that he pays his income-tax. As far as we are concerned, it is deducted straightway.

DR. A. R. MUDALIAR: Neither evading nor avoiding.

SHRI BHUPESH GUPTA: Only he avoids us sometimes because I do not see him very often. Now, I take it he would not do that but he must be knowing many things. Now there are people doing both the things and the Government do not get at them. As far as officers are concerned, the tax is deducted straightway. But when the millionaire earns the money, he does not pay. The Income-tax Department has to go to him, start a case, go to the High Court, Supreme Court, Constitution, Attorney General, Advocate General, Solicitor General and so on. We have to go through the whole gamut before we

can touch his money. That would create a lot of trouble. The tax policy should be a little simpler and the instrument for collection should also be properly geared for the realisation of these large amounts that are due. Concealment is taking place on a large scale. Mr. Kaldor has said that every year Rs. 200 to 300 crores are evaded. That figure has been contested by the Government but it has not suggested how much is being evaded.

SHRI H. D. RAJAH (Madras): If they knew then they would have collected.

SHRI BHUPESH GUPTA: It does not necessarily follow. They cannot collect even the tax that they have assessed. Arrears are there to the tune of Rs. 280 crores. They have assessed the amount but they have not succeeded in collecting it. So don't go with this illusion. I do not know what their idea is about the concealment that is going on. See the expenditure tax, how it has been concealed; see the wealth tax, how it has been concealed. Now, of course, exemption has been given to companies. See the gift tax, how it is being concealed. If you see the assessment you will find that they have got only Rs. 1 or 1½ crores whereas Koldar expected Rs. 10, 20 or even 30 crores. What has happened? These millionaire gentlemen when they die, many of them die pauper. You go to them and you find that they have arranged their property in such a manner that you cannot tax them. They know all the tricks and many of them make internal arrangements in the family and amongst their own relations to, what you call, avoid or evade payment of taxes. We do not know, but they do cheat and we feel that we have been cheated. They take advantage of all sorts of laws. Charitable trusts are created in order to avoid payment of income-tax. Accounts are kept abroad. I know for certain that quite a good number of Indian concerns maintain offices in London with

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a view to evading income-tax Who does not know that Birla Brothers have their offices in London when they do not need such an office there? How is it that a businessman is in a position to get Rs 19 lakhs put in one bank and get caught? How is it that some individual officers have got foreign accounts in Swiss banks, in French banks, in banks of the United States of America and in London? Have you found it out? I should like to know all these things, just now it is being avoided. In Calcutta, for instance, the British concerns are avoiding, I bring it to the notice of the House, but they do not—hon Members listen to it—the Treasury Benches never, take these things seriously. I know for certain because we know Calcutta a little better than many people do outside. It is not possible for them. What is done is this. An Indian is shown as drawing a salary of Rs 5,000/- Actually he is not paid so. The account is manipulated. The expenditure shown on salary account is unreal and misleading. The arrangement is there. He is perhaps given Rs 3,000/- or Rs 4,000/- and he has to keep quiet and pay income-tax, whatever it is, on that, or it is sometimes income-tax free. Now, what is this? Have you found it out? Is it not concealment? Inflated invoices are being used. Companies are being devided with a view to income-tax evasion. Everybody knows it. The other day when the "Amrita Bazaar Patrika" was faced with the question of implementing the recommendations of the Wage Committee, suddenly papers disappeared. Some papers were not available. When you people want to see the accounts, they would not be shown. This is the position. The hon Minister should tell us how to find the money. I share his difficulties, but I give my suggestions. I think the law has to be changed. Besides, the Government has to change its attitude. And what is more, in this connection, we have information that some of the big business houses have got income-tax

advisers attached to them, who advise them on the question of evasion of income-tax—what is called income-tax matters. Advice is obtained on income-tax matters. I know of lawyers in Calcutta who are approached to give advice on income-tax matters, very innocent, but actually the income-tax matter in question relates to methods of evasion or avoidance, whichever way you look at, of income-tax. This is being done. Almost every big business house in the country has got a mechanism for devising evasion and avoidance of income-tax. Highly paid officers are there for this purpose. Have you found it out? If you have not, seek the co-operation of the employees, seek the co-operation of others, who will give you the names of these people, the manner in which they function.

Then, Sir, another important suggestion in this connection is this. There is a connection between—I do not at all say the Income-tax Department is all bad, far from it—these people. There are very many honest people there. I know it. But at the same time, these honest people become somewhat paralysed when powerful influences are brought to bear upon the Income-tax Department in the context of close relation between some officers and the big business. This is the position. They are paralysed. Good people are paralysed. They cannot do anything. They cannot move. Files get stuck up somewhere and the orders do not come. And some intervention comes, wrong type of intervention. I take it that Mr Gopala Reddi would be interested in listening to me. He should find out to what extent the connection remains, connection between the big business on the one hand and some officers of the Income-tax Department, on the other. This is very, very important. It is not just fortuitous or accidental that after retirement some important income-tax officers find jobs in the big business concerns. Would I be wrong if I presume then that

when they were in service they had maintained some connection, some relation, so that after retirement they could easily get some kind of good job, cushy job there? There has been give and take in this matter. We have loss, that is another thing. Then, this kind of family arrangements take place. Concealment is taking place, in bullions. Nowadays what they do is not in the bank. If you live in Burra Bazaar, see for a while. In some such big locality you will find that some of them have currency notes in their houses. They keep them. I have heard of some people who would not like to feel comfortable in their houses until and unless they have currency in their safe of the order of several lakhs of rupees. Can't you find them out? Well, if you do not, then use your mechanism better and take the help of others. Then bullion is held. The whole thing goes outside your reach. Everybody knows that the Finance Ministry has lost considerably on account of this. Gold is held in bullion. Whatever income-tax is to be on them, we do not assess. That wealth we do not find. This is another problem. Then, expenditure is shown on all kinds of things. Various types of expenditure are shown in order to avoid income-tax. This is how a whole series of methods are there. I think you are being out-distanced in the game of cleverness by the big business. This is the trouble and when we say these you think that we are politically motivated. Not at all. Money you will get. I will not. Your Government will have more resources. I do not have that money. You should get at that money. I think when the country is being asked to go austere and all that, you should get at this money.

Then, Sir, various other transactions are there, I do not know how many. Sometimes I talk to some big businessmen when I travel and all that. Sometimes they point out—and it is very difficult for me to make it out because I do not have that detailed knowledge—how evasion goes on. These are matters we should go into. Foreign-

ners, I tell you again and again, the British concerns in Calcutta, have become past-masters in evading income-tax. That money you should touch. You should get at them and I think my hon. friend—like you Mr. Mudaliar—may advise us in this matter and if I may say so, he would like to advise us on the subject. So, concealment you see, how people can hoard money. Even some of the Government officers are there. In Calcutta, the other day, in the West Bengal Assembly, a catalogue was given, of officers getting Rs. 1,000/- or so, after retirement, building houses worth Rs. 1 lakh, Rs. 50,000/-, Rs. 90,000/- etc. Names were read out. Addresses of the houses and residences were given. What is all this? Somebody has evaded income-tax somewhere. Somewhere concealment has taken place. Now, there big police officials, district officers and so on after retirement, build houses. Names have been given. They are trying to explain away that the houses had been built in this manner and that manner. This is another thing. This is how it is going on.

Now, Mr. Deputy Chairman, I have spoken on the subject. I, therefore, would demand a proper consideration of the entire scheme of income-tax, so that we can realise the money, which is very, very important. And evasion and avoidance is taking place at the top on a large scale. Crores and crores of rupees are involved.

Finally, I would only like to make one request. Previously the Revenue Department of the Government of India used to supply us with certain papers, showing the collection and assessment of income-tax and certain statistical figures. We do not receive these papers now at all. I ask why it has been stopped? Not all of us, at least some Members in every Party, used to be supplied with such papers which showed the collection, assessment, various types of assesseees and so on. They give us a better idea of the subject, so that we could speak. I think this should be resumed and it

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is very improper on the part of the Revenue Department to have stopped it without trying to find out as to how we feel about it. I do not think that it is right that you should supply materials at pleasure and we should be denied at pleasure again. This is not a good thing. I would, therefore, ask the Government to keep us informed of this and seek our co-operation.

And lastly—I have finished—go after the Karnani Estate in Calcutta—I will give you another name—where wholesale organised evasion is taking place apart from trusts, where you have to take steps to get the income-tax. I have got details of this, but on some other occasion I will give it. This is going on. Particularly look at these Karnani people. I have added another name to the list that I give from time to time in order to find the concealment. In the interests of the country this money has to be discovered, properly assessed and taxed, and has to be effectively realised. And I think Mr. Satya Narayan Sinha would be the first person to associate himself with the sentiments which I expressed. It is for you to implement. We shall all be helping, if you really mean business. Sir, the time has come when we must not allow ourselves to be badgered, bullied and cheated by some of these big business elements. We are supposed to be more intelligent, more clever, all of us together. I think if we so mind we can get at them and get what is due to the country and the exchequer.

STATEMENT RE GOVERNMENT BUSINESS

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI SATYA NARAYAN SINHA): Sir, with your permission, I rise to announce that Government Business for the week commencing Monday, the 9th March will consist of:—

(1) General Discussion of General Budget.

(2) Consideration and return of the Appropriation Bills, as passed by Lok Sabha relating to:—

(i) Demands for Grants (Railways) for 1959-60; and

(ii) Supplementary Demands for Grants (Railways) for 1958-59.

(3) Consideration of any item of Government Business entered in today's Order Paper and not concluded.

(4) Consideration and return of the Appropriation (Vote on Account) Bill, as passed by Lok Sabha.

(5) Discussion on the Report of the Sanskrit Commission, (1956-57), on a motion to be moved by Shri Ram Sahai on 12th March, at 4 P.M.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 2.30.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at half-past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

THE INDIAN INCOME-TAX (AMENDMENT) BILL, 1959—continued.

DR. A. R. MUDALIAR: Mr. Deputy Chairman, I had no intention of taking part in the discussion of this Bill because I wholeheartedly support it, and I thought that words from me were quite unnecessary to extend further support to the hon. Minister. But my friend to my right has made it impossible for me to sit quite, having kindly drawn so many references to my past statements or mis-statements.

It is always a privilege and a pleasure to hear my friend, Mr. Bhupesh Gupta. I derive great inspiration from hearing his speeches. I know exactly what not to say, I know exactly how not to say it, and I know also when