

There are always likes and dislikes with all human beings, and he cannot be an exception to that.

SHRI BHUPESH GUPTA: Bombay also.

(Interruptions.)

SHRI M. C. SHAH: He may have something or other against some custodian, but I have met all those custodians. They are all very enthusiastic about nationalisation and they are doing their very best to expand the business.

SHRI BHUPESH GUPTA: Is the hon. Minister in their custody?

SHRI B. C. GHOSE: What is the business they have done so far?

SHRI M. C. SHAH: It is more than that of last year. If you want to have figures, I can give them to you. The reports that we get are most encouraging, and after this Corporation is set up, I can assure my hon. friend, Professor

SHRI B. C. GHOSE: I am not a Professor.

SHRI M. C. SHAH:that the results will be more encouraging. He need not be afraid of the progress.

Sir, I think, these are the most important points. With regard to the question of respect for the views of the Members of the House, I wanted to dispel that impression they have, and that I have explained already.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed." The motion was adopted.

ANNOUNCEMENT *RE* STATEMENT BY RAILWAY MINISTER

MR. DEPUTY CHAIRMAN: The Railway Minister will make a statement at five o'clock.

SHRI S. MAHANTY: Will there be an opportunity for us to discuss the statement?

MR. DEPUTY CHAIRMAN: There cannot be a discussion on the statement.

SHRI BHUPESH GUPTA: But we all submitted in the morning.....

MR. DEPUTY CHAIRMAN: No discussions are allowed after a statement.

SHRI BHUPESH GUPTA: He can make the statement today, and it is for you to consider whether you should admit my motion.

MR. DEPUTY CHAIRMAN: That is a different matter.

ALLOTMENT OF TIME FOR CON- SIDERATION AND RETURN OF THE INDIAN INCOME-TAX (AMENDMENT) BILL, 1956.

MR. DEPUTY CHAIRMAN: I have to inform Members that, under rule" 162(2) of the Rules of Procedure and Conduct of Business in the Rajya Sabha, one hour has been allotted for the completion of all stages involved in the consideration and return of the Indian Income-tax (Amendment) Bill, 1956, by the Rajya Sabha, including the consideration and passing of amendments, if any, to the Bill.

[THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU) in the Chair]

THE INDIAN INCOME -TAX (AMENDMENT) BILL, 1956.

THE MINISTER FOR REVENUE AND EXPENDITURE (SHRI M. C. SHAH): 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."

Sir, this is a short Bill which, I am sure, hon. Members will have no hesitation in passing. It seeks to add an

[Shri M. C. Shah.]

explanation to sub-section (7A) of section 5 of the Income-Tax Act with a view to removing a serious difficulty which has been created by the decision of the Supreme Court in a recent case. The Supreme Court decided that an order passed by the Central Board of Revenue or the Commissioner of Income-tax, under section 5 (7A), transferring the case of an assessee from one jurisdiction to another, in general term without reference to any particular year of assessment, and without limitation as to time, is beyond the competence of the authorities and, therefore, is invalid.

The necessity for this measure will be appreciated if I briefly explain at the outset the basis on which the jurisdiction for making assessments under the Income-tax Act is conferred on income-tax officers. Section 5(2) of the Income-tax Act empowers the Central Government to appoint as many commissioners of income-tax as it finds necessary and section 5(3) provides for the appointment of income-tax officers to carry out the assessment work in the various commissioners' charges. Section 5(5) enables the Commissioner of Income-tax to allocate the work of assessment in his charge among his income-tax officers and this he can do area-wise or income-wise or person-wise. While this is the normal basis of distribution of work among the income-tax officers, it often becomes necessary to transfer cases from one income-tax officer to another, either in the same Commissioner's charge or outside. These transfers may be made sometimes on the assessee's own request, on grounds of his convenience; there may be complicated cases requiring detailed and special investigation which the income-tax officer having normal jurisdiction over them will not be able to bestow; and they will have necessarily to be transferred to another officer. Sometimes, cases belonging to the same group of persons may be spread over in different jurisdictions, but for

the purpose of facilitating proper assessments, all the cases have to be taken away from the different jurisdictions and entrusted to one and the same income-tax officer. Again cases of companies and other persons engaged in particular trades or professions have to be entrusted to selected officers for facilitating speedy and satisfactory disposal of cases, e.g., textile mills, film artistes, etc.

The above are only examples to show that transfers of cases from one jurisdiction to another are an ordinary incident in the administration of the department.

2 p.m.

In order to provide for such contingencies, sub-section (7A) was inserted in section 5 in 1940. Under this provision, the Commissioner of Income-tax can transfer a case from one income-tax officer to another within his own charge and the Central Board of Revenue, in its turn, is empowered to transfer a case from one officer to another, if the two officers are in different commissioners' charge. Orders of transfer under section 5(7A) are invariably passed only after due consideration of all the relevant factors.

Government have all along proceeded on the basis that once a case is transferred under section 5(7A) from one income-tax officer to another, the jurisdiction over all the proceedings in relation to the assessee concerned passes completely to the later officer with effect from the date of transfer. The Supreme Court have now held that sub-section (7A) of section 5 authorised only transfer of a pending proceeding for a particular assessment year and cannot be made use of for an omnibus and wholesale transfer of jurisdiction for an indefinite period so as to cover all future assessment years. It is difficult in actual practice to follow the interpretation given by the Supreme Court, because it will not be possible to predict at the time of transfer when the pending proceedings will be completed. Further assessment for later years would come

in for action, and it will not be possible to defer indefinitely the assessment proceedings for those years. Apart from this, since 1940, a large number of cases has been transferred under section 5(7A) by orders of transfer of the type impugned. Assessments have been made and taxes collected, or proceedings are in the process of completion, in respect of these cases. Some remedy has, therefore, to be found in order to avoid complications which will arise if the jurisdiction in all these cases are affected by the judgment of the Supreme Court. To solve these difficulties, and to enable the department to continue to function efficiently and smoothly, in regard to cases already transferred or to be transferred under section 5(7A), the Bill clarifies the meaning of the word 'case' used in that sub-section, as it has all along been understood and acted upon by the income-tax authorities, and gives retrospective operation to the clarification.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): 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 KISHEN CHAND (Hyderabad): Mr. Vice-Chairman, the hon. Minister has explained in detail the implications of this Bill. I may point out that I am in fullest agreement with the principle that if there is any tax evasion or there are certain facilities in considering the assessment of any particular person, it may be transferred from one income-tax officer to another income-tax officer. It is but natural that in this complicated business of assessment, if particular trades and particular manufacturing concerns are assessed by one particular income-tax officer, there will be great facility. In so far as this power under 5(7A) was possessed by the commissioners of income-tax and the Central Board of Revenue to transfer pending cases from one income-tax

officer to another, there need be no objection against it.

But let us carefully examine the implications of this change. There is a case pending before an income-tax officer about an assessment for a particular year. The whole file is transferred to another income-tax officer. Nobody can have any objection to that particular assessment being passed by the new income-tax officer. There can be no objection about subsequent years. In the subsequent year's assessment, the file may be transferred from the new income-tax officer. But the objection I have is that an income-tax officer may rake up the assessment of previous years. There also, if there has been evasion, if there has been dishonesty, there are other methods. The commissioner could have appealed to higher authorities, I mean, the appellate tribunals, the appellate assistant commissioners, etc. If there is a case of fraud, the commissioner and the Central Board of Revenue possess special powers of opening up that case. The income-tax officer can open the case. Here, what will happen is that if the income-tax commissioner is dissatisfied with any assessment of any previous year, or he has a grudge against a tax-payer, he simply transfers that case. The new income-tax officer can open up any previous years' assessment and then he will pass a judgment. Supposing the income-tax commissioner is dissatisfied even with that judgment, he again transfers the case to a third income-tax officer. The third income-tax officer again opens up all the previous years' assessments, considers them, and passes an assessment order. Thus he goes on transferring from one to the other.

Our object is to collect the rightful taxes due to the Government but not to harass the income-tax payer. After all in this country, out of these six lakh tax payers, a very large number of them are genuine and honest tax payers. And simply because the income-tax commissioner or a member

[Shri Kishen Chand.] of the Board of Revenue has a grudge against a particular tax payer, and he wants to harass him, this will give him a handle. In our wisdom and after careful examination, we passed the Income-tax Bill and the wording is very simple. The wording is this. I will read out the wording as it exists :

"The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any such case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings and shall not render necessary the reissue of any notice already issued by the Income-tax officer from whom the case is transferred."

The spirit behind this section was that the case of a particular year is transferred. The assessment of a particular year can only be examined. So, when the Supreme Court was interpreting it, they also came to this conclusion and it is clear from the Statement of Objects and Reasons. "The Supreme Court has, however, held."—however is the opinion of the hon. Minister—"The Supreme Court has, however, held in *Messrs. Bidi Supply Co., vs. The Union of India* (Petition No. 271 of 1955) that this sub-section only authorises the transfer of a pending proceeding for a particular assessment year." The original Bill is very clear, and I think, the Supreme Court has very rightly interpreted it that if a particular assessment for a particular year is transferred, in the matter of subsequent years, the new income-tax officer may consider the case. The whole question arises about preceding years.

SHRI KAZI KARIMUDDIN (Madhya Pradesh): Applicable to pending cases or disposal cases?

SHRI KISHEN CHAND: It was really about the pending cases. The Supreme Court has also pointed out

that thing. To that, nobody has raised any objection. Now, the wording is: "----- which may be pending on the date of the transfer, and includes all proceedings under this Act....". Mark the words, "includes all proceedings under this Act....which may be commenced after the date of the transfer in respect of any year." Under the Act, the income-tax officer can say that there is a question of fraud or some sort of a hiding of income and he can open up the case of any previous year. He has got the authority even now to do so. My contention is that he has got the authority and he may exercise it once. Now, you transfer the case to another income-tax officer; he takes up the case for the same year again. Then the case is transferred to a third man and for the same period, the assessment is opened up.

In this way, why do you extend the powers of the income-tax commissioners to transfer not only the pending case, but all the previous years' cases also? We should not give a handle for unnecessary harassment. If it is really the intention of Parliament to have a finality in the matter, we should say so. If we want to reconsider the same assessment of the year by different income-tax officers, certainly we should accept this new amendment. In the civil law and criminal law, there is always a finality. You take up a case. A magistrate decides it. If you are not satisfied with it, you can go to the sessions court. If you are not satisfied there, you go to the high court and then to the Supreme Court. But once the case is decided, you do not go on reopening it. BGA. this, you are giving powers to the income-tax commissioner to go on reopening the same case, year after year, by transferring it from one income-tax officer to another. I think, it is most unfair. This is my interpretation of the amendment. If this is agreed to, I think, it will lead to a great deal of criticism and abuse of power by the income-tax commissioners.

In conclusion, I will only say that I do not want to help any tax evader; there is no intention of helping him. But I do want to protect the right of the genuine tax-payers.

SHRI B. K. P. SINHA (Bihar): Sir, the hon. Mover of this Bill has admirably and in very clear terms explained its aims and objects. It seeks to get over the effect of a judgment of the Supreme Court of India. This Bill provides for transfer of all cases of an assessee pending before any officer and all subsequent cases that may arise in the future by a single order. Mr Kishen Chand has thrown light on the undesirable character of this amendment. I have an objection of a different sort.

The judgment of the Supreme Court was based on two grounds. The majority judgment did not deal with the parent section 5(7A) under which omnibus transfers were purported to be made. The four judges took the view that the section did not contemplate omnibus transfers and since the transfer in that case was of an omnibus nature, it was beyond the purview of the powers of income-tax officers, and it was, therefore, bad. One judge agreed with this view, but he went further. He held that section 5(7A) itself offended the Constitution and was, therefore, bad. The four judges who delivered the main Judgment did not pronounce a verdict on this aspect of the issue. But all the same, there are observations in the main judgment which lend support to the view taken by the single judge. In any case, in the absence of any difference, the judgment of the single judge, to the effect that section 5(7A) itself was void inasmuch as it offended the Constitution, is still the valid law, for the Constitution says that the judgments pronounced by the Supreme Court shall be the law of the land. This amendment while getting over the effect of the judgment of the four judges, does not get over the situation created by the judgment of the single judge. And that judgment, in the absence of any difference,

is the accepted law of the land. I, therefore, feel that the purpose of this amending Bill may be defeated. The object can only be achieved if there is a large-scale and through amendment of various other sections of the Income-Tax Act.

This amendment, in my opinion, is shocking to one's sense of justice and fairplay. We know that all laws provide for transfers from one body to another body. In the criminal jurisdiction, a criminal case can be transferred from one magistrate or one judge to another. So is the case in civil suits. But in civil or criminal matters, it is individual cases that can be transferred. That was the law in income-tax matters as well, that only a single case would be transferred. Mr. Kishen Chand has rightly pointed out that there may be something in a case relating to the assessment of a particular year, something relating to the accounts of that year, which may justify the transfer of the case relating to that year to another tribunal. I do not see any justification for the transfer of all the cases of one assessee relating to any year, past or future, to another tribunal. (*Interruption.*) I do say, this omnibus transfer really offends not only the established principles about transfer, but it offends our sense of fair play and justice as well.

The hon. Mover said that the assessment relating to a particular trade may have to be transferred to a particular officer who knows the secrets of that trade, or who is fully conversant with the methods of accounting in regard to the trade. In regard to the assessment of cotton mills, jute mills, sugar mills, etc., they may have to be transferred to a particular officer. If that distinction had been made in the Bill, I could very well understand the justification for this, and in that case, in my opinion, the Bill would not have been unconstitutional. But here, what we provide for is the transfer of cases of 'persons', individuals only. This does not leave any scope for a rational classification.

[Shri B. K. P. Sinha.]

Under this Bill, it is not competent for any income-tax commissioner or the Central Board of Revenue to prescribe that the income-tax cases, say, of cotton mills shall go to this officer, sugar mill cases to that officer, or the jute mill cases to another officer. They are not competent to say this even after this amendment. I, therefore, do not see how, on this particular ground, this amending Bill can be justified. Sir, these are the two serious objections that I have against this measure. They have gone further also.

Sir, it is an accepted principle of legislation that any enactment should, as far as possible, be prospective in its operation. But this Bill makes its operation retrospective by providing that the Explanation shall be deemed to have always been inserted at the end of section 7A. I know that this Bill seeks to embody the interpretation that has been put on section 7A by the income-tax authorities for, say, five or eight years. But it has been our experience that that interpretation has caused immense hardships in many cases to many assesses, and it has sometimes been used as a weapon of vindictiveness. I know of one case which is still pending before the Supreme Court. The assessee in that case came from some important city in Punjab. His case was transferred to some other officer after the proceedings had advanced to a certain stage.

SHRI BHUPESH GUPTA (West Bengal): What was the assessment?

SHRI B. K. P. SINHA: I cannot give you! the figure of assessment? Now, Sir, he had to carry the whole load of books to the other officer. The order was "I am going to such and such place, and be present on such and such date, at that place, along with your books of accounts." The whole load of books he carried to that place. But when he went there, he received another order saying "I have no time here. I am going to such and such place, and on such and such

date, you please come there." That is how, Sir, things went on. And the assessee's patience was exhausted to such an extent that he took recourse to the Supreme Court. Now his case is there in the Supreme Court, and it may be heard after the vacation.

So, Sir, this sort of a provision not only offends our sense of justice, but in practice, it operates very vexatiously against the assessee. I feel that taxes should be realised and that there should be no evasion of taxes. The people who play a fraud on the exchequer should be penalised, but there are different ways of penalising them. You can penalise them directly. Why take recourse to this measure and penalise them indirectly? If the exchequer has the right, the assessee also has his own right. I, therefore, feel that there should be a balance between the rights of the State and those of the assessee. This Bill, in my opinion, does *not* strike that balance at all. Rather, it tips the scales very unfairly in favour of the assessing department. That is all, I have to say.

SHRI BHUPESH GUPTA: Mr. Vice-Chairman, this is rather a difficult subject for us to speak on, namely, the income-tax. The hon. Minister must be very conversant with the subject because not only of his interest, but also of his inclinations. As far as I am concerned, this is the first time that I am paying income-tax as a Member of Parliament. Of course, the tax is paid at the source, and there is no chance of any evasion of income-tax. Nonetheless, Sir, the subject matter is one of great importance to the country and for people like us also, because it involves a lot of public money, and we have always to be careful about the public funds, the potential public funds, because we need so much money for the reconstruction of our country. If the income tax law is to be amended with a view to tightening up the income-tax administration and making it efficiently

discharge its duties, then certainly, we would welcome such a step. And I hope, that this measure is intended to achieve this object.

But, Sir, I was rather disappointed to hear the speech of the hon. Minister, because he did not actually make out a proper case. He gave certain technical details which, of course, are relevant and necessary in this connection. But what I would like to know is

SHRI M. C. SHAH: Sir, it is self-explanatory. The hon. Member should read the Explanation.

SHRI BHUPESH GUPTA: Who are the people whose cases normally have to be transferred from one officer to another? What are the reasons for transferring such cases from one place to another? What are the difficulties experienced by them in this matter? Sir, these are the matters in regard to which we would like to have a little more light in order to get ourselves conversant with a subject like this.

The hon. Minister rightly said that he wanted the efficient functioning of the income-tax department. So do I, "very much. But the trouble with our income-tax department is this. It lives in a sort of isolation from the people, and it functions in a particular way which does not guarantee either efficiency or speed. That is what we find. After all, we know, all of us, that in the course of the last few years, huge income-tax arrears have accumulated, and they are not being collected. Then, there is the tax-evasion which is a very common feature in the whole business. I would like to know whether this kind of measure would help in dealing with such cases where tax-evasion has taken place, or arrears have accumulated. Obviously, cases of arrears would come under this, I can guess it. But I would like to know how far this is going to help us.

Then, Sir, about the efficiency of administration, what we need today is

not merely a measure like this. We should have a comprehensive measure amending our income-tax law. That is very essential, because it has been proved in actual life that the income-tax law is not adequate enough for dealing with such a situation. And when I say this, I have also in mind the administration, because the administration also should be so efficient as to make it difficult for the tax-evader to evade taxes, or for the rich people to get away without paying the taxes that are due to the State exchequer. This sort of a thing is not done by our Government. Suddenly, when there are Supreme Court decisions, they come forward with a small amending Bill. But what about the actual experiences of our public life? They point to the necessity of presenting before Parliament a very comprehensive amending Bill, as far as the existing Income-tax Act is concerned. But the Government is not doing anything of that sort.

Sir, I was a little perturbed when I read in the Audit Report that even the Ministers indulge in the evasion of income-tax. They get themselves, somehow or other, under-assessed. Well, I do not know what happens....

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU) : Mr. Gupta, the Audit Report says that they are underassessed. The Audit Report does not say that they evaded the tax.

SHRI BHUPESH GUPTA: Well, Sir, the Audit Report is a parliamentary document. All right, they are underassessed. But I think, the Government should make a statement about all these things. And it is surprising that these things are known only after the Audit Report has been published. There have been so many press comments. I had come across more than one press comment. But the Government does not come forward to clarify the position at all, and say a little more about its under-assessed children on the Treasury Benches. This is what we would ask the Government.

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You know that the Ministers are very much in the limelight, because they have to make speeches, they have to reply to questions, and there are so many interruptions etc. here. And if the Ministers get under-assessed, you can very well imagine what must be happening in the case of those who function secretly, and who are not so much in the limelight as the Ministers, and how much under-assessment must be taking place in their case. I therefore, say that the amendment of the income-tax law is absolutely essential for improving matters. I am not opposing this. It will be necessary in certain cases to transfer cases from one officer to another, for the reason that that person goes after the big capitalists. Mr. Himatsingka knows the whole lot of them. He comes from Dalhousie Square.....

SHRI M. C. SHAH: Both come from Calcutta and so they should be knowing each other very well.

SHRI BHUPESH GUPTA: Both of us come from Calcutta, but one lives in Lyons Range and another somewhere else, which makes a world of difference. It is quite conceivable, it just happens in life, especially in those areas in Lyons Range, where there is a gold rush so to say, that they do cultivate the income-tax officers, at least attempt to cultivate them. They have got a knack of cultivating the income-tax officers. The income-tax officers are sought after. I am not casting any reflections on any individual person. I do not know any individual officer by name, but I do know for a fact, that some officers of the income-tax department, who are entrusted with such responsibilities, are liable to be cultivated by these people and do get cultivated by them, the corrupters, the seducers of our public life, the monopolist elements in our society. It may be necessary in such cases to transfer cases from such an officer to another officer. I would very much welcome it. It may prove beneficial, but we would like a little more of in-

formation about this Government, unfortunately, is very reserved on this" subject.

As you know, we have been trying to get an assurance from the Government that the names of these honourable tax evaders in the country should be made known to the people at large, but the hon. Ministers in the Treasury Benches, especially the finance department, are interested in shielding them. We do not know against whom cases are pending. You can pass on the case from one officer to another, but I think, your purpose will be better served and you will be able to get more money from them, if you do publish their names. There are employees who would come forward and tell you, there are workers who would come forward and tell you, how these people, against whom there are allegations of tax evasion, behave in running their business, and a lot of material will come to your knowledge. Why are you not doing it? What comes in the way? What solicitude have you got for them, so that you do not think that their names should be published? Are they people under some sort of veil? Do they live in purdah? They live very much openly. The hon. Minister may come forward with some arguments why he cannot do this, but this does not apply in the case of other accused persons. Their names are very much in the press. Even if they are 100 per cent, innocent, charges are made against them, it is said that they are guilty, and there is no difficulty in that. But as far as these people in our society are concerned, against whom cases are pending for years, their names are not to be known.

No doubt in certain cases, transferring a case from one officer to another may be necessary, but we would like to know whether this arrangement would ensure speed. Speed is the essence of the matter, because it is important to collect money as quickly as possible from them. To efficiently implement the assessment, money should be realised as quickly as possible, and there should not be any kind

of perfunctoriness or delay in this matter. Here again, we find that the income-tax laws of the country suffer from lots of procedural difficulties, and procedural difficulties seem to be created by the Government and nursed by the Government. Within a few hours, we will be hearing great speeches from the Treasury Benches about the Preventive Detention Act, but when it comes to the question of these people, why can't you have a simple, straightforward procedure, by which you will get at them quickly and haul them up before the Investigation Commission?

Now, a number of cases are pending for a number of years and we do not know what is going to happen to them. Let Mr. Shah throw some light on this. He says that the Bill is simple, and he gives a little speech, and we are supposed to support them. We shall certainly support them, if they are really inclined to take steps to collect the revenues that are due to the State from these people, professional tax evaders, and for putting these monopolist and big business in strait-jackets. We shall certainly support you. There is no doubt about that. But because we support you, we would like to know how far this measure would achieve such an end.

Then, about the appointment of officers. Often the choice may be between Tweedledum and Tweedledee. Sometimes, it becomes a mere show to deceive the public. Sometimes, it becomes a mere show on the part of certain elements in the income-tax department to justify their own conduct. That is what we find. That is why we would like to know the circumstances in which these transfers are being made, or are sought to be made.

Lastly, I would like to add that the income-tax administration in our country requires a thorough overhaul. This is what I say. I am not blaming any individual; I am not blaming any officer or commissioner, of anybody, but I know that corruption is there in the income-tax department, and all I am

asking is to ensure the efficient functioning of the Income-tax Department. I can tell you of another Department, the C.I.D. Department. When I telephone the Party Headquarters, the whole machinery is set in motion and functions very efficiently to know what I talk. I would like to know why they don't do such things in the case of the tax evaders. Is there no arrangement to see that that machinery works also in order to find the practices of these people? Such things should be considered by the Government, and what is more, I want that the seductions and the inducements, which are sometimes come across, should also be made known to Parliament, so that Parliament can offer advice and offer practical suggestions for improving matters. The Income-tax Department in our country, unfortunately, lives in a sort of sheltered privilege, covered by the Treasury Benches on the one side and by the corruption and malpractices of big money on the other. That is the position in which we live today. The time has come for the Income-tax Department to be geared up and improved and rid of the influence of those people who, directly or indirectly, indulge in and encourage corruption and malpractices.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU) : We have only 10 minutes left to complete all the stages of the Bill. I would request hon. Members to be very brief in their speeches.

SHRI M. C. SHAH: You will give me about 15 minutes at least because I have to reply to all these, and particularly my friend Mr. Gupta who has been brought now under the income-tax department.

SHRI P. D. HIMATSINGKA (West Bengal): Sir, I don't oppose the amendment, but I want to make certain observations on the Bill that has been brought forward in this House. It is unfortunate, as has been remarked by one of the hon. Members, that an amendment should be necessary.

[Shri P. D. Himatsingka.] immediately a decision is made by the Supreme Court, the highest judiciary in the land, but it appears that, but for this amendment, a lot of difficulty is likely to be created in a number of cases which have been sent to certain special circles by the income-tax department and which cases have been going on for a number of years. So, there is some justification, but I would suggest that the authorities should *take* careful note of the decision that has been made by the Supreme Court in the two cases which have given rise to this amendment and if the Department transfers cases from the same town to another officer, perhaps this question of inconvenience, which has been dealt with by the honourable judges, is not likely to arise. But if cases are transferred from Bombay to Calcutta, or Calcutta to Ludhiana, or Ludhiana to Delhi, people are likely to take objection.

It will be clear from the judgments of the learned judges that they are still not decided, except for one judge, about these sections being in contravention of the Fundamental Rights, as guaranteed by articles 14, 19, 31, and some others of the Constitution. This law had been in force and very large number of cases had been transferred from one officer to another, and no one had taken exception to these transfers, until cases were transferred from one distant place to another and the party felt that it was very hard on it. Therefore, my suggestion to the Department will be that, if they really transfer cases for convenience from one officer to another for quick decision, and are able to arrange a number of cases of the same party by the same officer, perhaps, there will be no objection, nor the court will take any exception thereto. But if the party will be put to an extra expense of having to come to very distant place, from where he carries on business ordinarily, there will be difficulty.

Another trouble that arises is this. I was just reading a speech of my hon. friend, the Minister, that there

have been large number of cases of tax evasion and therefore, it has been thought necessary to transfer the cases to some officers who have got special experience. That, in a way, condemns the rest of the officers of the Income-tax Department, as if they are not competent to find out the actual figures that the party should be assessed at. And the very fact that a case is transferred to a special circle makes the officer, to whom the case is transferred, suspect that there is very big amount of evasion which he has to find out. The very fact, whether there is any truth or not, whether there is any substance or not, the very fact that if the case is transferred on that basis, that makes the officer feel that there is something and he is afraid of his own skin and therefore, tries to impose a tax which perhaps he would not have thought of otherwise. I have heard an officer saying 'It is a special circle case. Therefore, I have to assess like this.' I don't say that all officers are like that. I have come across one or two, who have behaved in this case also like any other officer, but there are other officers also who feel that because a case has been transferred to a special circle, they have to assess in a special manner and a special amount to please the higher officers. The hon. Minister shakes his head, but he is shaking his head without knowing the facts because this is the information from the horse's mouth as they say. I have had talks with some of the assesses and some of the officers also.

SHRI M. C. SHAH: The officers tell you that way? I should like to have the names of officers.

SHRI P. D. HIMATSINGKA: I will give you the names. The officer says: "As this is a special case transferred to me to this special circle, unless I assess at Rs. 25,000, there will be difficulty." As a matter of fact, all those assessments have been set aside by the Appellate Assistant Commissioner, and I will give the name to the hon. Minister if he wants and if he thinks that

that will be of any use to him. That is what I *want to* say. Therefore, the stigma should not attach to a case, simply because it is transferred from one place to another, and if the Minister makes it clear to the officers, the objection to this will be very much reduced.

So far as under-assessments are concerned, now this change in the law, that perquisites and the advantages and house rent and all that are to be taken up, that exactly is the cause for the under-assessment of the hon. Ministers, and if that be so, most of the hon. Members of the two Houses are also being under-assessed, because they are using free telephones and reduced rents, and if the law be properly applied, perhaps they will also have to pay higher tax.

SHRI BHUPESH GUPTA: I will leave it to the tax department.

SHRI M. C. SHAH: I have heard the hon. Members very carefully. I have heard my friend Mr. Gupta also very very carefully. He himself admitted his ignorance about this income-tax law and therefore, he has not understood why this amendment was brought forward. I ought to have explained. I thought that if he had just listened to my speech, with his instrument in his ears.....

SHRI BHUPESH GUPTA: I did.

SHRI M. C. SHAH: Still you did not follow? That is unfortunate. Recently the case of a Bidi Supply Company was transferred from Calcutta to Ranchi and there were assessments for several years. That party went to the Supreme Court and the Supreme Court construed Section 5 sub-section 7(A) on the basis that the word 'case' means a case of one assessee pending for that year and if that case is transferred, that only can be transferred for the year for which that was pending, and if there is a general order of transfer of the case for several years, that order becomes invalid. That was the purport of the Supreme Court judgment. Now, in the year 1940, we [

amended this Income-tax Act and we added sub-section 7(A) in section 5 to enable the commissioners of income-tax to transfer the cases from one income-tax officer to another income-tax officer's charge, and the Central Board of Revenue to transfer the cases from one commissioner's charge to another, and from one I.T.C to another. Why that was necessary, I will explain.

It is not the intention of the Government and it cannot be the intention of the Government to transfer the cases of all the assesseees from the places where they reside or from the places where they carry on their business. Ordinarily, as mentioned in section 64 of the Indian Income-tax Act, the assessment will be made on the assesseees by the officer having jurisdiction at the place where they reside, or at the place where they carry on their principal business. But then, there are certain cases, there are certain special cases, which have to be concentrated in certain places. There are certain groups of business people who carry on their business, not only at Bombay, Calcutta, Kanpur and Delhi, but at various other places in the country. All these business activities are interconnected and interlinked. Therefore, in order to get the correct assessment of the income of these groups at all the various places, it becomes very necessary to concentrate all these cases in a particular place.

Then, there is also the necessity for specialised knowledge of the kinds of business on the part of the income tax officers concerned, who have to handle these cases, to probe into the returns that may have been filed to find out the actual income, whether there has been evasion in the sense that there has been concealed income which had not been shown in the returns. This can be done only if all those cases are concentrated at one place, because they are all of the same group. They can all be properly examined if they are all concentrated in the hands of one officer, one income-tax officer, wherever he may be working. Also,

[Shri M. C. Shah.] there is the specialised knowledge obtained by the income-tax officer who goes into these accounts of these companies and that is valuable. They can find out from these accounts whether those companies have filed the correct returns, whether they have produced the correct accounts, whether they have purchased their materials at reasonable market prices, or whether inflated prices have been debited and thus more money has been taken away and put into their own pockets, whether the stores have been purchased according to the market rates, or at inflated prices and these inflated prices have been debited to the books and thus more profit taken away and put into their own pockets. Therefore, we have created these special circles for the commissioners, special circles for these groups to be brought within their charges.

All these things necessitated the transfer of cases from one place to another all over India. There are special circles for Bombay. There are special circles for Calcutta and there are special companies circles for Bombay and special companies circles for Calcutta. There are also special circles in Ahmedabad. Kanpur, and so on. Then all these cases are to be grouped together, centralised there, in order to enable the officers concerned to give the fullest attention to those cases. Therefore, it has become absolutely necessary that all these cases should be transferred. When we transfer those cases, we cannot have the assessment only of one year. The assessment will continue, because before the assessment of one year is realised, another year would have come, and then the third year, and so on. There is interdependence and they are all interlinked. Therefore, when we pass orders, we pass orders in general terms that the assessment cases will be dealt with by the income-tax officer from the time the cases were transferred to him. But the Supreme Court said that that is not the interpretation that can be put on the word "case". Therefore, we have said that "case" would include "cases".

It will include the case after its transfer and all the pending proceedings also. That is the reason why we have added this explanation, because of the ruling of the Supreme Court on the interpretation of the word "case". We have all along been interpreting "case" as meaning "cases" as meaning all the proceedings after the date of transfer and we have been acting accordingly, since the year 1940. And thousands and thousands of cases have been transferred and all these cases have been disposed of and taxes have been collected. There are also thousands of cases pending, in which the assessments will amount to lakhs and lakhs and even crores and crores in some cases. Therefore, what could we do? If we did not come in with an amendment of this nature, we would have to release all these sums from being collected and leave all these people scot-free. Are we to do that? I do not think any hon. Member will accept that conduct on the part of the Government of India. Therefore, we consulted the Attorney-General and we have brought forward this amendment.

The Supreme Court held that section 5(4) of the Income-tax Investigation Commission Act is *ultra vires*. There were hundreds of cases pending and they were all cases of concealed income. They had come to the Commission for disposal. Then came another judgment that section 5 (1) of the Act was *ultra vires* of the Constitution. So many cases had been disposed of and there were so many cases pending disposal. So we brought in the amending Bill and it was passed by both the Houses of Parliament. Then came another judgment that section 5(1) was *ultra vires* from the date of coming into force of the Constitution, that is to say, from the 26th January, 1950. There were nearly 1,200 cases. Some were disposed of and in some, collections were made and some were pending disposal. All those cases had to be transferred to a special directorate with three senior Commissioners of Income-tax. Now, if this decision of the Supreme Court stands as it is, and we have to act

accordingly, then all those cases will have to go, and crores and crores of income-tax would be lost to Government. Do hon. Members propose that we should act in that way? I do not think that is the right way. Therefore, this amendment has been necessary. There are so many groups who have got their business activities all over the country and all those business people in these groups are earning lakhs and lakhs; some earn even crores. If we do not go deep to probe into the accounts very very carefully, we cannot get the income-tax that is due to Government.

Sir, we hear from every side of the House that there are evasions. There are evasions and Government also believes that there are cases of evasion. Only today, I placed on the Table of the House the report of that expert from England, Prof. Kaldor, and our notes on that. In order to take all the tax due from these concealed incomes, in order to detect these incomes, we have to concentrate the work and put it in the hands of certain very well experienced and intelligent income-tax officers. My hon. friend Mr. Himatsingka asks whether all these officers looking into these cases have the necessary knowledge? I do not really understand such a question. Naturally, when an officer gains experience, he becomes more and more useful. There are always certain beginners and there are others who have some five or six years' training. There are still others with fifteen or twenty years' experience, people who have had experience of probing into those cases and we always place very good and able income-tax officers in charge of this work, persons who have specialised knowledge of these accounts. And we concentrate all such cases into the hands of those officers. Therefore, this power should remain with the income-tax department and therefore, this amending Bill.

3 P.M.

Sir, there are the other points raised by my friend, Mr. Bhupesh Gupta, and he says about....

SHRI P. D. HIMATSINGKA: He has gone.

SHRI M. C. SHAH: I am sorry, but still, I should like to say that we are obliged to bring in amending Bills piecemeal. We are also very much worried about this position. We propose, if possible, to get the Income-tax Act codified and to bring a comprehensive Bill as may be recommended by a high power commission. We will request the Commission that has been already set up by the Law Ministry, the Law Commission, if they can help us, and if the Law Commission cannot undertake this work, we shall have to find out other very experienced highly-placed persons to form a commission to codify the Income-tax Act. We also feel that there is a great necessity for codifying the Income-tax Act.

Then, there was one point that was raised by my friend, Mr. Bhupesh Gupta. He read a portion of the Audit Report as has been published perhaps in the press. He said, there is under-assessment in the case of Ministers. He did not mention the entire thing. He only wanted to create a very wrong impression in the minds of the hon. Members. That Report, so far as I know, concerns the question of the free supply of electricity and water to the ministers. He says that they are perquisites and income-tax should be charged.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU) : That has been circulated to all the Members.

SHRI M. C. SHAH: I am sorry then. The reply will come from the Government later on, as is being done, but in order to remove the very wrong impression wilfully created by Mr. Bhupesh Gupta, I may say that that question of free supply of electricity and water was considered, whether any assessment could be made on that. We have taken the advice of the Law Ministry and the Law Ministry advised us that, as the Act of the salaries and allowances of the Minis-

[Shri M. C. Shah.] ters stands to-day, they are not liable to income-tax charges. So this is the only point with regard to the under-assessment of the Ministers noted by the Comptroller and Auditor-General. A fuller reply will come later on, when an occasion comes and that reply is to be given. Only incidentally I mention it, so that this wrong impression created should not go round. There is no under-assessment. As a matter of fact, Ministers' salaries are given after deduction of income-tax and the income-tax is deducted according to the prevailing rates under the Income-tax Act, and therefore, I would like to clarify that position only incidentally.

Then, he says that names are not being published and all that thing. But he has not studied the Income-tax Act. There is that section 54, and as long as that section 54 is in the Income-tax Act, we cannot publish the names, and that Income-tax Act was passed by the Central Legislature. Therefore, the Finance Ministry is not responsible. He may say that the Finance Ministry should consider this question and should do away with that section. That is another matter. If he had pleaded in that way, then certainly, I would have said that we will consider.

He says the Finance Minister is responsible for not doing this and that. He said something of that sort. The income-tax department of the Finance Ministry is rather very vigilant to see that there is no evasion of income-tax and we are just reorganising the whole system of the income-tax administration. We have already a Special Officer, who was with the Taxation Enquiry Commission, who is going into the whole matter for the last twelve months or so. His report is expected very shortly, and we propose to consider that report and to implement the recommendations, whichever are accepted. About corruption also, we have got already a special inspectorate of investigation. We have brought to

book some of the officers. One or two Members of the Lok Sabha gave certain information. In one, immediate action was taken and that income-tax officer, after enquiry, was dismissed, though he was retiring within six months and though there were appeals that he may be allowed to retire prematurely. We said "No", and he was removed from service. Perhaps the matter is before the Public Service Commission, because, after all, when the officers are appointed by the Public Service Commission, they, in these things, have a right to appeal to the Public Service Commission.

There is another case. Recently, one Member just gave me information about some attempted bribetaking. Immediately that officer was suspended. He was proceeded against and he has been given two years' sentence by the district and sessions judge. But there is an appeal. After all, we cannot say anything about it.

In the South, there was one case, one income-tax officer who had taken one thousand rupees as bribe. We said that he should be prosecuted. He was prosecuted and the Special Magistrate convicted him. He just pleaded that it was a loan from the assessee. We could not believe it. The Madras High Court accepted the theory that it was a loan and we have to go to the Supreme Court.

Another officer was also caught very recently. He had collected moneys which stood at about Rs. 1,70,000 in his account. We asked, "How did you collect that much money?" He could not explain it satisfactorily, and he was removed from service.

So, we are very vigilant. We have got a vigilance organisation and we do not spare anybody. Even if later on those Members who gave the information, even if they come for showing mercy, we won't show mercy.

Then, Sir, about the point raised by my friend, Mr. Sinha, perhaps section 5(7A) may be declared *ultra vires*. We will see whether the situation arises. If necessary, we will have to amend the Constitution. We will just then see what happens. We always take the advice of the Attorney-General. Here we took the advice of the Attorney-General. The Attorney-General gave us this amendment. We have accepted the advice of the Attorney-General and we have come forward in order to see that the administration is not put to any difficulties in respect of the two cases which are transferred and those which will be transferred for the special purpose of getting more income from those cases, and such cases will be pursued. So, Sir, I think the House will pass the motion.

SHRI P. D. HIMATSINGKA: On a point of information, Sir. On what basis was the Bidi Supply Co. case, which went to the Supreme Court, transferred from the important place of Calcutta, where there are special circles, to an out of the way place like Ranchi?

SHRI M. C. SHAH: We understood that he had big business transactions being carried on there in Bihar and we thought, there was a very big sum, concealed income, and therefore, it was necessary that that should be transferred to Ranchi, so that we can just detect all those transactions that were spread over there.

SHRI ABHIMANYU RATH (Orissa): were those two officers convicted?

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU) : He wants to know whether those two officers have been convicted or not.

SHRI P. D. HIMATSINGKA: The names of those two officers.

SHRI M. C. SHAH: The names, I think, appeared in the papers. One was Avtar Krishna, or something, for attempted bribe-taking. He was convicted for two years.

SHRI J. V. K. VALLABHARAO (Andhra): What has been the lot of the other person who offered the bribe?

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): It is not the Question Hour that you put all questions.

The question is:

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

The motion was adopted.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU) : We shall now take up clause-by-clause consideration.

Clause 2 was added to the Bill.

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

SHRI M. C. SHAH: Sir, I move: "That the Bill be returned."

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU) : The question is:

"That the Bill be returned." The motion was adopted.

THE TRAVANCORE-COCHIN STATE LEGISLATURE (DELEGATION OF POWERS) BILL, 1956

THE MINISTER IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR): Sir, I beg to move:

"That the Bill to confer on the President the power of the Legislature of the State of Travancore-Cochin to make laws, as passed by