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COMMON CAUSE

VOICE OF "COMMON CAUSE"

COMMON CAUSE comes to you as the printed platform of "COMMON CAUSE", the public interest group which for over a year has been giving voice to public causes and shared interests, analysing issues, ventilating grievances and seeking redress. "COMMON CAUSE" has been especially trying to give cohesion to the point of view of the urban middle classes, which are often prone to dissipating their energies in incohesive grumbling unsupported by coordinated action. COMMON CAUSE will now help through print to bring their concerns to the attention of a wider audience and to mobilise constructive views and pressures for redress of their grievances. It will disseminate information about matters of common concern, elicit response, build up enlightened and responsible puplic opinion, and suggest ways and means of alleviating the problems of the people.

All sections of the society have their difficulties, which are multiplying. But while many sections have developed forums of their own to press their causes, urban middle class people have been slow in developing their own forums, despite the resources and ability they have for articulation. "COMMON CAUSE" and this companion in print seek to fill this gap.

Amidst the mounting problems, a redeeming feature is the spread of consciousness among the middle classes that action is needed, coordinated social action by societies, associations and organisations, in all walks of life. Then alone will competent authorities be persuaded to take mitigating action.

We are most keen that effort of this nature should be stimulated all over the country. In Delhi we have, during the past few months, viewed with great satisfaction the emergence of many voluntary organisations which, in their respective areas, are becoming vigilant about the rights of citizens and active in the cause of their

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(For Private Circulation only)

respective constituents. We are happy to see that many such institutions are also coming up in other parts of India. We hope that in course of time there will be town-wise compilation of these organisations and associations so that common endeavour is generated by them for collective action on problems which are of common interest to them. Our effort will be to disseminate information to them, through COMMON CAUSE, on the various issues which press upon the urban middle classes and other sections of the society.

In this first issue of COMMON CAUSE we are presenting three important matters. One covers the recommendations which "COMMON CAUSE" has submitted to the Finance Minister of the Government of India for 1982 Budget. Second, related to it, is that of Estate Duty, commonly termed Death Duty, which is causing serious concern to the middle classes who have suddently come within the net of this imposition because of enormous escalation of property values. Third issue is of close concern to over a million pensioners of the Central Government. Our Writ in the Supreme Court was heard by the Division Bench and a decision has been given referring it to a Constitution Bench of the Supreme Court becausa of the importance of issues involved in it. We reproduce the order of the Supreme Court and also give a summary of arguments which were submitted before the Division Bench. We will now request the Chief Justice of India for enabling an early hearing before the Constitution Bench because of the obvious urgency of decision on it.

We hope that organisations, associations and other members of "COMMON CAUSE" all over the country will communicate to the concerned authorities their views and suggestions on these poblems and will similarly articulate the problems of their areas and constituents to seek redressal. We would be grateful for their keeping us informed about the matters of common interest which are taken up by them, for being ventilated through the platform of COMMON CAUSE.

Common Cause Recommendations for 1982 Budget

We have made detailed suggestiqns and recommendations to the Finance Minister of the Government of India for the 1982 Budget. In these we have dealt with specific problems of personal taxation in relation to Direct Taxes, namely, Income Tax, Wealth Tax, Gift Tax, Capital Gains Tax and Estate Duty. The pattern of these recommendations has been mainly the same which was adopted for communicating our views for 1980 Budget as well as the 1981 Budget. We have had cause for satisfaction that quite a few of our recommendations found acceptance and were incorporated in the respective Budgets. In these columns we give a summary of our main recommendations for 1982 Budget.

We have stressed that it is of fundamental importance that serious and sympathetic consideration should be given to the need of alleviating the ravages that inflation c ontinues to inflict on the survival capacity of rhe middle classes. The suggestions and recommendations appearing in this paper inevitably arise from the effects of inflation and eroded value of the rupee.

In this context we have urged as a general proposition that all monetary limits/ceilings incorporated in the laws relating to Income-Tax, Wealth tax, Gift Tax, Capital Gains Tax and Estate Duty need to be reviewed to raise them to realistic levels. Such limits/ceilings were prescribed many years ago and most of them have remained unchanged, and in some cases deliberalised, despite a marked decline in the rupee value. All such limits/ceilings need to be suitably revised upwards and appropriately indexed thereafter.

It has been suggested that the question of the rates and exemption limits of direct personal taxes should be viewed in the overall perspective of the total revenues of the Government of India. Over the

years the importance of personal direct taxation has been diminishing. The gross revenue from all direct personal taxes, aggregating Rs. 1650 crores, constitutes about 9% of the gross revenue receipts. If the Centre's share alone is taken into account the net revenue from personal taxes is 490 crores, which is less than 5% of the Centre's tax revenues. It is therefore, obvious that any concessions that may be sanctioned in respect of direct personal taxes will have only a marginal impact on the total revenues as also tax revenue both gross and net.

INCOME TAX

EXEMPTION LIMIT OF INCOME TAX—The raising of exemption limit in 1981 budget from Rs. 12,000 to Rs. 15,000 which COMMON CAUSE had suggested, has been very much appreciated and has benefitted a large number of small tax payers. It is a matter of satisfaction that the slab system has been reoriented so that the exemption of Rs. 15,000 limit is operative at all levels of incomes. However ,it is a matter of regret that the Government of India correspondingly raised steeply the rates of tax on incomes from Rs. 15,000 to Rs. 25,000 and from Rs. 25000 to Rs. 30,000 from 18% and 25% to 30% and 34% respectively. As a consequence, relief to persons whose incomes range from Rs. 15,000 to Rs. 30,000 is comparatively small, and no relief has been given to theassessees with incomes exceeding Rs. 30,000 who are also badly in need of such relief. Having regard to these facts we have made the following suggestions:—

(i) Taking into account the rise in price index which has necessitated inter alia the grant of additional dearness allowance instalments to the Government servants, the present exemption limits needs to be reconsidered and raised to Rs. 25,000 to mitigate the harshness of inflationary pressures on persons of smaller incomes. The exemption limit of Rs. 25,000 should apply also to the Hindu Undivided Family income.

(ii) The existing maximum marginal rate of tax of 66%, inclusive of surcharge, is unduly high and, as we have recommended on earlier occasions, it needs to be reduced to 50%; if not immediately, in a phased manner over the next two to three years. It does not need to be emphasized that high marginal rates of tax are counter-productive in the sense that they dampen incentive to earn and also provide an attractive incentive to suppress income.

The ceiling of Rs. one lakh for application of the maximum marginal rate is totally inadequate and we have recommended that this figure should be raised to Rs. 3 lakhs. Prior to 1976 the ceiling was Rs. 2 lakhs and it was reduced to Rs. one lakh in that year. Correspondingly, the slabs should be suitably spread out, giving larger relief to income between Rs. 25,000 (at present Rs. 15,000) and Rs. 60,000.

Income from salaries and other fixed income (in cluding income from property which has been 'frozen' at 'standard rent), should be taxed at a lower rate. Fixed income earners, who may have also income from other sources, should be suitably compensated in respect of the fixed incomes. There is adequate economic justification for this inasmuch as salaries and 'frozen' rents do not increase with inflation. or if they do, they increase at a much lower rate than other incomes.

STANDARD DEDUCTION—While expressing our appreciation of the recent liberalization of rate of standard deduction and increase of its ceiling to Rs. 5,000, we have submitted that this concession does not adequately compensate salary earners for the phenomenal increase in the prices of vehicles, including scooters, and the cost of their running and maintenance. The cost of other elements of incidental expenses has also increased substantially, We have therefore, suggested that the standard deduction should be allowed at a uniform rate of 25% with a ceiling of Rs. 10,000. It should have application to salaried employees in active service or retired as well as to self-employed persons whose only source of income is from interest and house property.

INCOME FROM PROPERTY

(a) As we recommended earlier, income tax on "notional income" in respect of self-occupied property is an unfair burden and should be abolished. Houses built from hard earned savings for self-occupation earn no income. We have previously represented and have strongly re-iterated that one self-occupied house should be exempted not only from income tax but also from wealth tax and estate duty.

(b) It has been recommended that, as the present concessions allowable for self-occupied

house are inadequate, the ceiling of Rs. 1,800 for deduction in respect thereof should be raised to Rs. 5,000 so that owners of comparatively small properties may not be subjected to tax on this account.

(c) Deduction upto 6% of the annual value for collection of rent, provided for under S. 24(viii) of the Income Tax Act, requires to be increased to 10%. Likewise, the repair charges need to be raised from 1/6th of the annual value to 1/4th.

(d) As there appears to be some doubt in this regard, it is suggested that a provision specifically permitting deduction of house tax/property tax from the "notional income" on such properties should be made.

(e) As a measure intended to promote construction of residential houses, the Income Tax Act allows a flat deduction for initial five years of completion of the building; but the limit of Rs. 2,400 per annum prescribed in this regard is very low and needs to be raised to at least Rs. 5,000.

(f) A view has been taken that the allowance for "vacancy" is permissible only where a house remains vacant for a part and not the whole of the accounting year. This is patently illogical and it has been suggested that a suitable clarification may be incorporated in this regard.

DEDUCTION UNDER SECTION 80

(a) **Section 80 C: Contributions towards Provident Fund, Life Insurance etc.** Under the Finance Act of 1980 the exemption limit of Rs. 4.000 was raised to Rs. 5,000 and contribution in excess of this amount was exempted only to a partial extent -50 per cent in respect of such contributions upto Rs. 10,000 and 40 per cent in excess of Rs. 10,000. It has been suggested that the exemption limit of Rs. 5,000 should be raised to Rs. 10,000 and contributions in excess of this figure should be exempted to the extent of 2/3rds of such excess. The benefit of such deductions in respect of all classes of savings, admissible for deductions to individuals, including Post Office Savings Bank, Cumulative Time Deposits, should, **mutatis mutandis**, be allowed to Hindu Undivided Families also; there appears to be no reason to make a distinction bet ween the two categories of assessees in this regard.

(b) **Section 80 G : Donation to Charitable Institutions**. As the spirit of charity is strong even amongst the middle income assessees, we have suggested that the limit of 10 per cent of the gross total income admissible for the purpose should be raised to 25 per cent.

(c) **Section 80L: Income From Certain types of Investments.** As a general proposition we have suggested that all productive investment should be exempted from income tax, such as investments in government securities, bank deposits, UTI, shares of joint stock companies etc., as this will encourage investments in developmental activities. If this general proposition is not found acceptable at this stage, it is suggested that at least the investments made for a minimum period of 10 years should be completely exempted from tax. The present exemption limit in respect of income from investments in government securities, banks, shares etc. should be increased to at least Rs. 15,000, prescribing separate limits for specific categories of investments, if necessary.

ADVANCE TAX—The original exempted limit for payment of advance tax of Rs. 10,000 was fixed when incomes above Rs. 5000 were subject to income tax. In 1980, when incomes upto Rs. 12,000 were exempted from income tax, the figure of Rs. 10,000 for advance tax was raised to Rs. 12,000, and in the year 1981 when incomes upto Rs. 15,000 were exempted from income tax, the exemption for the purposes of advance tax was also raised to Rs. 15,000. The figure is totally unrealistic because every assessee is now required to pay advance tax even though the tax payable by him may be small. The present position frustrates the original intention of the exemption that small tax payers should not have to undergo the rigours of making advadce payments three times a year. It has been suggested that having regard to the changed crcumstances the present limit of Rs. 15,000 should be raised to Rs. 30,000. Further, we have suggested that in order to reduce the trouble to the assessees on this account to some extent, they should be required to pay the tax in two instal ments. This will reduce a lot of unnecessary work in the Income Tax Department.

COMPULSORY DEPOSITS—As we have previously submitted, levy of compulsory deposits is unjustified and unfair. Apart from the harassing and time consuming procdure of instalments, the take-home packets of the improverished middle class is further reduced. The government could raise the

comaratively small amount accruing from this source by increasing its public borrowing. If this suggestion is not found acceptable, we have recommended that the present exemption limit of Rs. 15,000 should be raised to at least Rs. 30,000. Further the interest on compulsory deposits should be exempted from income tax and the accumulations therein be exempted from wealth tax.

It is a matter of satisfaction that persons who have reached 70 years and are not required to contribute to the scheme are allowed to withdraw the amounts to their credit. There is an option to the contributors to retain the deposits in the bank and receive interest thereon. It has been suggested that where the depositors decide not to withdraw the amounts of interest due to them, such accumulations of deposits should carry compound interest, that is, interest should also be paid on the interest element of such deposits. Moreover, as we have urged on earlier occasions, the age limit of 70 is unduly high for Indian conditions and should be reduced to 60.

Where the estimate of total income is below the taxable limit the assessee can get dividends without deduction of Income-tax at source or deduction at a lower rate than prescribed, but for this he has to pass through a cumbersome procedure for obtaining a certificate from the Income-tax Department directing the companies to pay dividends without deduction of tax. Section 194, therefore, needs amendment to provide that where the shareholder gives a declaration in writing that his income chargeable under the head of dividends or interest on government securities, Unit Trust etc. mentioned under Section 80(L) will not exceed Rs. 3,000/-, no deduction of tax should be made even where the dividend in any particular case exceeds Rs. 250/-. This will afford a great relief to to small investors.

INTEREST ON DEBENTURES—For long term finance ranging from 10 to 12 years without taking resource to institutional and bank borrowings, companies are now relying heavily on the issue of debentures converitible or otherwise. Such debentures are becoming popular amongst the investers in preference to deposits with companies. To attract investment of larger funds from the public for such debentures, the interest on debentures issued by companies in which the public are substantially interested and which are quoted on the stock exchange should also be included in sub-clause (ii) of sub-section (1) of Section 80(L).

TAXATION OF HINDU UNDIVIDED FAMILIES—Both the income and wealth of a Hindu Undivided Family are taxed separately from the income of wealth of its members. The HUF in the last few years has been unfortunately considered as a means of avoiding taxes, which is not correct. Various amendments have been made year after year to weaken this institution which has been an integral part of the Hindu society since times immemorial. The discriminations against HUFs are evident from the fact that lesser basic exemption limits for income tax have been prescribed for HUFs in comparison to individuals and higher rate of income tax/wealth tax have been prescribed where any one member of a HUF has income or wealth above the taxable limits. The qualified HUFs have been penalised on three counts; firstly the basic exemption limit has not been raised to Rs. 15,000; secondly, higher rates of tax are applied in different slabs of income/wealth; and thirdly, while in the case of other individuals complete exemption from tax upto the whole of income not chargeable to tax has been allowed, HUFs have been denied this method of calculation of tax. HUFs thereby pay tax from the income slab of Rs, 8,000 whereas in other cases income upto Rs. 15,000 is fully exempt. These discriminations are un-warranted because if a member of an HUF has certain income or wealth, he pays the taxes separately and there is no justification for penalising the joint family. It has been urged that necessary amendments should be made in the next finance Bill in order to remove these discriminations.

SELF-ASSESSMENT—In view of the enlargement of scope of self-assessment under Section 143 (1) of the Act, i.e. finalization of assessment upto an income of Rs. one lakh withaut cailing the assessees, the work-load of tax authorities has considerably reduced. It has been suggested that time limit for completion of regular assessments should be reduced to one year instead of two years at present. The officers of Tax Department will thereby have to complete one arrear and other current year's assessment. This will bring the work upto date and the assessees will not have to wait for 2½ years for completion of time-barring assessment of a particular year.

INCENTIVE FOR SMALL FAMILY NORMS— Government is making various efforts to encouage Family Planning by offering certain incentives and other facilities, but from the income tax point of view no such steps have hitherto been taken. It has been suggested by us that a person striving to maintain a small family should be given some relief in taxes. A deduction of minimum of Rs. 2,000 should be allowed from his taxable income where an individual has got not more than two children at the end of the relevant previous year. Where both the spouses have taxable income, this relief may be allowed to the spouse earning higher income. The desirability of giving preferential treatment under section 80(C) has also been urged, as allowed in the case of authors, artists, actors etc.

TAX ON CAPITAL GAINS

Inflation has made a mockery of the conceptual basis of levy of capital gains. Having regard to the decling value of the rupee, the real gain would, in the event of disposal of the property, turn out to be insignificant or even illusory. Therefore, this tax like the wealth tax is inequitous and unduly burdensome. If it is to continue, a suitable device has to be evolved to compute the real gain to the vendor, having regard to the present value. In the alternative, as to preliminary step, the adjustment in the cost of acquisition based on market value as on 1st January, 1964 should now be brought upto 1st January, 1977. Thereafter, there should be suitable indexation of the valuation at suitable intervals.

Under Section 53 of the Act, capital gain is excluded from the total income of assessee, firstly, if the full aggregate value of the consideration arising from transfer of one more capital assets does not exceed Rs. 25,000, and secondly, if the fair market value of all capital of assets does not exceed Rs, 50,000. Taking into account the abnormal rise in fair market value of the immovable properties, the exemption limits of Rs. 25,000 and Rs. 50,000, respectively, need to be suitably revised, and it has been suggested that the respective figures should be Rs. 50,000 and Rs. 1,50,000.

Under Section 54E of the Act, it is provided that capital gain on transfer of capital assets is not to be charged if certain conditions are satisfied, such as, investment of the whole or any part of net consideration in "new assets" within a period of six months after the date of transfer of such assets; the "new assets" previously comprised deposits in banks for a period of three years. With effect from February 1979, the previous condition was substituted and it was provided that the net consideration is to be invested only in the 7-years National Rural Development Bonds. This amendment has not been found attractive and favourable, and has in fact resulted in increase in under-valuation of properites and tax evasion. For encouraging proper valuation and true disclosure of fair market value, it has been suggested that the original condition for claiming exemption from tax on capital gains be restored. Restoration of the previous concession will help in discouraging utilisation of black money in rural estate business.

Under Section 80T of the Act. certain deductions are allowed while computing capital gains relating to long term capital assets. One such deduction is of Rs. 5,000. The Initial exemption limit of Rs. 5,000 needs to be revised to Rs. 15,000, and the percentages in respect of immovable property and other property of 25% and 40% respectively need to be raised to a uniform figure of 60%. It is but fair that the owner of the asset who nurtures it over a period of years should be allowed to retain a sizeable portion of the gain.

WEALTH TAX

This is one of the most irksome levies from the point of view of the tax payer and the most difficult to administer from view point of the Department. Considerable trouble arises from valuation of assets at market price. The present procadure is highly subjective and therefore not always equitable giving rise to a lot of litigation. Thc yield from wealth tax, being around Rs. 60 crores, is less than 0.4% of Central revenue. Taking into account the inequity of this levy, which is in nature of multiple taxation, we have suggested that wealth tax should be abolished. Its abolition would reduce the harassment experienced by the assessees and would also save the Department considerable administrative bother so that it can tackle the pressing problem of tax evasion more effectively.

EXEMPTION LIMIT AND RATES—Without prejudice to our plea of abolition of wealth tax, we have urged that the ceiling, below which no wealth tax is payable, should be raised from Rs. 1.5 lakhs to at least Rs. 4 lakhs in the case of individuals and Rs. 5 lakhs

for HUFs because even people of very modest means have under the present limit become liable to wealth tax due to inflation. The socio-cultural situation in in India being what it is, possession of gold ornaments is a universal traditon. Gold ornaments worth about Rs. 10,000 acquired or gifted at the time of marriage, years ago, are being currently valued at around a lakh of rupees and with continuing inflation, the maiket value of the assets of a person of even modest means exceeds the ceiling of Rs. 1.5 lakhs. We have suggested that in order to mitigate this hardship, gold jewellery and ornaments upto a realistic value limit should exempted from wealth tax,

The rate of wealth tax has been increased from time to time without any noteworthy addition to the Central exchequer. We have suggested that the maximum marginal rate of this tax should not exceed 2% and the 'zero' slab should be exempt from tax irrespective of the total wealth.

VALUATION—This aspect of wealth tax raises many problems. A suggestion worthy of consideration is the adoption of 'cost' as the basis of valuation, suitably indexed for inflation, say every three years. This would make for greater administrative convenience and also subtantially mitigate the grievances of tax payers. If the present system of valuation has to be continued, we have suggested that suitable allowance should be made for the element of tax on the capital gains.

OTHER EXEMPTIONS—The present exemption limit of Rs. 1.5 lakhs in respect of assets such as government securities, shares and bank deposits needs to be raised to at least Rs. 2.5 lakhs, and the limit of Rs. 25,000 in respect of investments with Unit Trust of India to at least Rs. 50,000. The present provision is that if market value of any conveyance or conveyances exceeds Rs. 30,000 then exclusion from the net wealth will not operate. This value of Rs. 30,000 was prescribed in 1975. The prices of vehicles have since gone very much higher and it is appropriate that the limit should be increased to Rs. 60,000.

Self-occupied house property should, as we have previously recommended, be completely excluded from the levy of wealth tax. To guard against luxury houses seeking exemption on basis of self-occupation, reasonable physical limits could be imposed though we visualize administrative difficulties in doing so. Alternatively, the present limit of Rs. one lakh in respect of immovable property should be raised to Rs. 4 lakhs.

GIFT TAX

Gift Tax revenues, about Rs. 6 crores, being less than even 0.04% of Central revenue, we have urged its abolition. It would do well to remember that Prof. Kalder's recommendation regarding the adoption of an integrated tax structure was based on a substantial lowering of the rates of income tax. As that has not happened, the very rationale of these peripheral levies is open to question on economic considerations. If necessary, the minor revenue losses on abolition of wealth tax and gift tax can be recouped by suitable adjustmenls in other sources of revenue.

EXEMPTION LIMIT—Subject to the suggestion of abolition of gift tax, we have urged that the exemption limit which was brought down from Rs. 10,000 to Rs. 5,000, be raised to Rs. 25,000 in accordance with the diminished value of the rupee.

AGGREGATION—Aggregation of gifts by taking into account all the gifts made in the preceding four years is needlessly harsh on tax payers and administratively inconvenient to the Department. Aggregation, we have suggested should be abolished.

Gift upto Rs. 50,000 to a spouse, while exempt from the levy of gift tax. should be excluded from the burden of Section 64(1)(iv) of the Income Tax Act and Section 4(1)a(i) of the Wealth Tax Act.

ESTATE DUTY

Our suggestion for the abolition of wealth tax and gift tax applies with equal, if not greater, force to Estate Duty as revenue from this source is of the order of only about Rs. 13 crores. Our general observation regarding review of all monetary limits for upward revision applies even more forcefully to Estate Duty where, for example, the deduction on account of funeral expenses at Rs. 1,000 and for household effects Rs. 2,500 fixed in the fifties when the law was enacted, continue to remain unaltered, which is most unrealstic. The limit for exemption from Estate Duty should be raised to Rs.4 lakhs and made retrospective from 1st April, 1980, when ihe Finance Minister in his Budget speech made reference to the need for such upward revision. In fact there is justification for suitable increase with retrospective effect from 1st April, 1978, when the then Finance Minister had announced the intention to raise the exemption limit.

There should be total exemption from the levy of Estate Duty on one self-occupied house subject to appropriate safeguards.

Subject to our suggestions in the preceding paragraph valuation of immovable property for Estate Duty purposes should be made on the same basis as for wealth tax and this should be made retrospective with effect from 1st April, 1981, in line with the intention expressed by the Finance Minister in the Budget speech of 1981. It is a matter of great disappointment that effect has not been given to this assurance so far. We have reiterated that necessary legislation should be enacted without further delay to relieve the gnawjng anxiety of people in regard to the horrendous effects of the existing position.

Lastly, it is necessary to bear in mind that in the Indian socio-economic structure, it is the aim of every thoughtful person to make suitable provisions for his dependents e. g. wife, dependent children, grandchildren, widowed daughter etc. by effecting savings even at sacrifice to his current needs. It is fair, therefore, that the heirs, particularly widows and dependent relations, should receive substantial share of the property for maintenance. The levy of estate duty at the rates varying from 25% to 85% is confiscatory in nature. We have suggested that if the duty has to continue, the rates should be substantially reduced so that the heirs and the purposes for whom the deceased may have providad, get the benefit of at least 2/3rds of the estate. Therefore, fhe marginal maximum rate of duty should not exceed 40% of the assets with suitable spread-out of the slabs.

GENERAL

We have urged that these various recommendations and suggestions need to be considered against the background of frustrations and difficulties of the tax payers in the face of mounting burdens, exasperating anomalies inherent in the present tax laws and the extremely upsetting procedures in the admiuistration of these tax laws. It is no wonder thar the tax payers increasingly regard the operation of various tax laws as vicious and heartless and their administration as pernicious and extremely frustrating and thereby they are feeling more and more alienated from the governmental apparetus.

Undoubtedly, taxes are of paramount importance for the growth of the economy and for directing the economic activities of the country and ensuring stability of the administration. It is of equal importance that the fiscal policies regulating the taxes should lead to acceleration of economic growth, promote savings, encourage investments and generate employment. The burdens and anomalies of taxes should not hamper the process of development nor constitute disincentives,

The tax burdens should not be such that they become counter-productive and lead to diminishins returns, besides causing alienation of the people from the government. The tax laws should be made tolerable and acceptable to the tax payers in general, inspiring confidence in the people, in their administration in a manner consistent with justice and fairplay on the basis of the principle that in case of doubt, the benefit should go to the tax payer. While the errant tax payer should not be shown any indulgence under the law, there is absolute need of healthier attitude towards the tax payers in the admintstration of the tax laws.

Government has over the years been concerned with the problems of simplifying and rationalising the tax laws and their attendant administrative procedures. Several Committees and Commissions have been appointad for the purpose. These Committees end Commissions have examined all the various aspects of tax burdens, anomalies and administrative difficulties and have made far-reaching recommendations, but It is most unfortunate that the government has not found it possible to pay heed to their recommendations or take the public into confidence in regared to their non-acceptance.

It will be observed from the analysis of individual tax laws that a large measure of disaffection arises from the failure of the Government to keep the tax burdens in tune with the enormous erosion of the rupee value that has come about during the last many years. The rupee has gone down in value to one-fourth and even lower, over the past three decades. While this has been happening, the tax laws have maintained their exemption limits pegged at the levels which were relevant when the tax limits were determined years ago, and in certain cases decades ago, and have become completely unrealistic in the context of present value of the rupee.

ADMINISTRATIVE PROCEDURES

While the substantive provisions of the individual

enactments of Direct Taxes and the rates of their imposition, require to be re-examined for rectifying the hardships and anomalies from them, it is of equally serious importance that the problems and difficulties encountered by the tax payers in the administration of these enactments should be remedied. The administrative procedures relating to these measures, involving the delays in assessment and the unceasing stream of penalty notices, etc. issuing from the concerned offices, lead to extreme frustration to the tax payers and are often a greater cause for dissatisfaction than even the quantum of levy of the taxes.

The relevant provisions under the individual Acts make it incumbent that the concerned officer, while issuing a notice of assessment, re-assessment or computing income, should record the reasons for doing so. While this is a mandatory provision, no reasons are communicated to the assessee and he is asked to attend the office through a printed/cyclostyled routine type of notice. Almost every assessee has experience of the extreme harrassment he encounters through the receipts of such notices which often lead only to frustrating attendances, humiliating waits in the corridors of the Revenue Buildings, unjustifiable postponements regardless of convenience of the assessees, frequent non-availability of the files or the documents in them, and the attendant worry and expense. The present procedures of Income Tax necessitate practically constant attention to its problems throughout the year, including the problems connected with the submission of estimates and payment of advance tax instalments, preparation and submission of returns, seeking extension for such submission in the event of delay in procurement of required certificates, and attending throughout the year to various notices which are received in relation to the assessments of the previous years which keep pending for years.

The present prescribed periods of 2 years and 4 years for the completion of assesments in cases of Income Tax and Wealth Tax, respectively, are too long. They also lead ro abuse inasmuch as there is tendency on the part of the Income Tax Officers to issue flimsy and frivolous notices just before completion of the prescribed periods, to avoid the lapse. We feel that the objective should be, as stated above, to complete the assesment within the year in which the Return is submitted and to this end all efforts should be directed to find the ways and means to attain it. The year Returns which remain uncompleted by the end of the should be taken as accepted, and the Income Tax Officers should be strictly told not to issue any notices which may not be absolutely necessary. These instructions should prevail in respect of Income Tax, Wealth Tax and Gift Tax. The Assessement Orders should be invariably communicated forthwith after the completion of the assessment. At present the Assessment Orders are often sent months after even the delayed completion of assessments. For avoiding delays in assessments there should be a register for each area or district in which entries should be made of individual Returns, date of submission, date of assessment, date of communication of the Assessment Order, and other relevant dates of notices, recoveries refunds appeals, decisions on appeals, etc. From these entries the action in relation to each Return should be easily verifiable and this register should be inspected every month by a senior officer to see where delays have occurred and the reasons therefor. We feel that there should be scope for bringing about these improvements without adding to the existing manpower which has already become huge and apparently unmanageable.

We have urged that the taxation officers must shed the notion that the assessess called to appear before them have to be dealt with as defaulters or criminals. Thay must be made, on the other hand, to cultivate the climate of trust and consideration towards every assessee and these must appear to flow from the taxation officers in their behaviour towards the assessees. Often the assessees of valued status in the society are made to cool their heels in the corridors of Income Tax Offices; a number of assesses are in pure routine given the same hour of the day to attend irrespective of the time that each case would be expected to take for the hearing; they are made to wait for hours and their cases are then adjourned; and repeated notices continue to be issued, on account of poor maintenance of records' even after a matter has been satisfactorily explained. It would lead to considerable improvement if it were to be prescribed by the Government that where any notice is eventually found to have been issued unjustifiably, the department should be held liable to refund to the assessee the expenditure incurred for appearance or representation in connection with it and eventually the concerned officer should be answerable to the department

for the default in connection with it.

There is greater need of concentrating on the insteraction of the administration with tax paying public and for improving the climate between the tax payers and tax gatherers. There should be emphasis on expeditious assessment and expeditious grant of reliefs prescribed under the enactments and their procedures. The rigours of the statutes can be considerably mitigated and made acceptable to public through an enlightened and fair administration, and we have represented that it should be the responsibility of the government to ensure that efforts are directed to that end through change in the attitudes of the taxation officers and alteration in the administrative procedures.

It will be conducive to improvement in the climate of relationship between the tax payers and tax collectors if a system of committees of representatives of the Department of Income-tax and of the tax payers and chartered accountants could be institutionalised in such manner that they hold regular and purposeful meetings at the level of Income Tax Commissioner and the minutes thereof and suggestions emanating from them are examined for remedy of the problems and formulation of policy decisions. These minutes and suggestions should be dealt with at a senior level in the government so that due importance is attached to the meetings and deliberations of these committees.

ESTATE DUTY

Our Petition to Parliament and Government

The Minister of Finance, Government of India, made the following announcement in relation to the Eastate Duty in the Budget speech of 1981 :

> "I propose to give some significant concessions under the Estate Duty Act. The present limit of Rs. 50,000/- for estate duty was fixed in 1958. I propose to raise it to Rs. 1.5 lakhs, the same as under the Wealth Tax Act. I also propose to provide that one residential, house or part thereof will be valued for estate duty purposes on the same basis as for the purposes of Wealth Tax. Since the Estate Duty Act can be amended only with the concurrence of State Legislatures, a Bill for giving effect to these proposals will be introduced later."

Prior to the monsoon session of the LOK SABHA it was reported in the newspapers, apparently at instance of the Government of India, that a Bill for amendment of the Estate Duty Act was proposed to be introduced in the monsoon session. The proposed Bill was not, however, introduced in that session. There is great concern and anxiety at the delay which has already come about in the revision of Estate Duty provisions. A previous announcement had been made in the Budget speech of 1978 in which it was stated that the exemption limit of Estate Duty would be raised from Rs. 50,000/- to Rs. 1,00000/- and it was stated that the Bill for effecting amendments in the Act would soon be introduced with the concurrence of State Legislatures. This revision never came through. The announcement made by the Finance Minister in the Budget speech of 1981 was also hedged around with rhe stipulation that the proposed Bill for amending the Estate Duty Act would be introduced after securing the concurrence of the State Legislatures. In the context of the Bill not having yet been introduced in LOK SABHA the people feel that the amendment of the relevant provisions might get further delayed.

"COMMON CAUSE" has submitted the following points in its Memorandum.

i) The entire matter is of serious urgency. The present position, amidst the emormous inflation and unprecedented erosion of rupee value, has become nightmarish for every family even of average means. Finding the ramedy for this situation can brook no delay. Legal circles in the country hold the view that requisite modifications in the Estate Duty provisions do not necessarily require the prior concurrence of the State Legislatures. Estate Duty is classified at Item No. 87 in List I (Union List) of Schedule VII of the Constitution in the following words :

"Estate Duty in respect of property other than agricultural land".

Obviously, thus, concurrence of State Legislatures is not required for effecting amendments in the Statute or Rules of Estate Duty except where these relate to agricultural land. In regard to agricultural land there is provision under Article 252 of the Constitution which enables any two States to press for requisite amendments through their Legislatures. The other States can then adopt the amendments u/s 5 (A) for the Estate Duty Act. Moreover, Sub-section (2) of Section 33 of Estate Duty Act authotises the Government of India to make alterations of the nature indicated in Finance Minister's 1981 Budget speech by making a Notification in the Gazette and subsequently laying the Notification before both Huses of Parliament. Besides these specific provisions of the law, the Government of India has wide powers under the Estate Duty Rules.

(ii) The exemption limit of Rs. one lakh for a residential house, which was provided in 1964, is totally unrealistic in the existing circumstances. With the present eroded value of the rupee the exemption limit should be raised to Rupees five lakhs as has continuously been demanded from various

quarters in the country. The condition of "exclusively used" for residence of the assesse, in this context, also needs to be modified in line with the modification made in the Wealth Tax Act.

(iii) It was announced by the Finance Minister in the Budget speech of 1981 that one residential houses or part thereof will be valued for Estate Duty purposes on the same basis as for the Wealth Tax purposes. This announcement, while greatly welcome, has raised quite a few problems. The words "or part thereof" in particular lead to serious misgivings in the public mind. Practically all middle class houseowners have had to give on rent portion of the house for meeting the problems and requirements of present day living. A number of them have rented out the whole houses and have taken up alternative cheaper residence elsewhere. For these houseowners, who built the houses from meagre savings of life time, which have now escalated in value and brought them within the net of Estate Duty, the nightmare of the imposition is in no way mitigated by above announcement of the Finance Minister. It has been urged, therefore, that one residential house of the assessee, whether self-occupied or rented out, should be exempted from the imposition of Estate Duty.

(iv) The acceptance by Government of India of the demand that self-occupied residential houses should, for the purposes of Estate Duty, be valued on Wealth Tax basis. is very welcome indeed This will adequately meet the situation brought about about by the enormous escalation of property values in recent years- It has been urged in this context that the problem needs to be seriously examined in relation to those residences which have been built within the last few years amidst high costs and prices.

It is in consideration of these facts the cost and price criteria of 1970-71 should be applied to all constructions that have taken place after that year.

v) In the above mentioned announcement in 1981 Budget, the Finance Minister has stated that the exemption of Rs. 50,000 for purposes of Estate Duty is proposed to be raised to Rs. 1,50,000 to bring it at par with the exemption from Wealth Tax. This proposed exemption limit needs to be considered in the light of the fact that for Wealth Tax purposes there are exemptions available also upto Rs 1.5 lakhs on deposits in scheduled banks, Rs. 25,000 under Unit Trusts, moneys kept in General Provident Fund or Public Provident Fund or Cumulative Time Deposit in Post Office. Exemptions should be available in respect also of those items which are exempted under the Wealth Tax, because it is obviously anomalous that the various amounts which remain exempted under the Wealth Tax during the life-time of assessee should, on the day following his death, become subject to levy of Estate Duty. Another point in relation to this exemption is that the enhancement of exemption limit should apply from 1978. when the then Finance Minister made announcement to this effect.

vi) The monetary limits provided in various sub-sections under Section 33 (i) of the Estate Duty Act, relating to matters such as value of household goods, funeral expenses, gifts, life insurance premiums, provision for marriage of daughter, etc. need to bc brought in line with the realities of present day prices and values. The limits as they stand at present have become ridiculously small.

In view of the delay that has come about in effecting alterations in the Estate Duty Act we have submitted that the Government of India shpuld effect the necessary alterations by notification under Sub-section (2) of section 33 of the Act and lay the Notification before both Houses of Parliament as provided in the Act.

The aggregate realisation from Esrate Duty is only about Rs. 13 crores which after taking into account the expenses of recovery, is obviously not such an amount which should justify the anxiety and agony it generates. It has been suggested and is for serious consideration, whether this small quantum of realisation should not be alternatively effectsd throught some supplementation of Wealth Tax provisions.

GOVERNMENT PENSIONERS CASE

Judgment of Division Bench of Supreme Court

"After hearing the Counsel for the parties on all the points involved in these petitions we reserved judgment From a close analysis of the arguments and the materials before us and having delved deep into the various pros and cons, shades and aspects of the matters involved, we are clearly of the opinion that the petitions involve a substantial question of law regarding the interpretation of the Articles 14 and 16 of the Constitution and the point being one of first impression any judgment given by us would be of far reaching consequences as it would affect not only the destiny of several lakhs past and present pensioners but also involve a very heavy stake.

Having regard, therefore, to the very great public importance of the nature of these petitions, we are of the opinion that the case should be decided by the Constitution Bench. We therefore direct that these petitions be placed before the Hon'ble Chief Justice of India for hearing bv the Constitution Bench"

SUMMARY OF ARGUMENTS BEFORE DIVISION BENCH

The Supreme Court Bench consisting of Mr. Justice Murtaze Fazil Ali and Mr. Justice R. B. Misra

heard on the 8th and 9th December 1981 the arguments on the Writ Petition by COMMON CAUSE on behalf of Central Government Pensioners wherein it was contended that the Pension Liberalisation Rules of 1979 have caused serious anomalies and discriminations against the pre-1979 pensioners as compared to the post-1979 pensioners who are beneficiaries of the Rules.

Mr. Anil Divan, Senior Advocate, appearing for COMMON CAUSE and the petitioners, brought to the notice of Court the serious anomalies which under the new Rules give more pension, for instance, to an Army Major recently retired as compared to a Major General retired under previous rules. A Section Officer of the Government of India retiring under the new Rules gets more pension than a Secretary to the Government of India who retired earlier. The pension of an officer retiring under the new Rules computes practically to double the pension of the officer of exactly the same status and responsibilities who retired under the pre-1973 Rules, and at every level the difference between retirees of pre-1979 and post-1979 periods ranges from 20 to 30% and even more. These anomalies operate over the entire range of employees of civil and defence services right from peons and sepoys to higher ranks, it was stated on behalf of the petitioners.

Mr. Anil Divan pleaded that there should have been an equitable method and a rational principle for evolving the pension liberalisation rules. He pointed out the procedures employed, for instance, in U.K for mitigating the problems of the pensioners arising from increase in the cost of living. All previous pensioners in U.K. were given the benefits of liberalisation in 1971 through an Act of Parliament despite the financial difficulties through which the Government was then passing. He argued that pension is a right which accrues to a government servant and that it does not depend on the discreion of the gnvernment nor is it an act of grace or bounty given by the government. Denial of pension to a government servant on retirement affects his fundamental right, it was argued. Quoting American Law, expounding the concept of pension, he stated that pension is not wages nor remuneration, but it is akin to wages and is paid for the services rendered in the past for enabling the recepient to meet the expense of living.

It was argued on behalf of the petitioners that the cut-off date 31.3.1979 adopted by the government for extending the pension liberalisation was artificially and arbitrarily determined and did not havy any nexus sought to be achieved in ameliorating the problems of the pensioners in the context of increased cost of living. It was argued that by the irrational fixation of the date an unfair and irrational classification has been brought about between the older pensioners and the new pensioners.

An intervention on behalf of Bharat Pension Samaj was permitted by the Court. Mr. G. K. Sanghi, Senior Advocate, submitted on behalf of Bharat Pensioners Samaj that older pensioners need greater consideration because of age and infirmity and also because they were recepients of smaller pensions. The higher cost of living applies both to new pensioners as well as old pensioners and it was disctiminatory to liberalise pension rules in favour only of the newer pensioners.

The Union of India was represented by Mr. Abdul Kader, previous Advocate General of Kerala. He submitted that persons retiring on their retirement dates were governed by the pension rules operative on the date of retirement and therefore the previous pensioners could not claim to be treated at par with the newer pensioners in respect of whom the pension liberalisation rules were framed in 1979. It was also argued on behalf of the Union of India that the pension liberalisations from time to time have always been given prospective effect and that they cannot be given retrospective effect. It was argued that liberalisation of pension was effected for improving the conditions of service and not because of higher prices. In respect of the fixation of a date it was argued by Mr. Abdul Kader that the fixation of a date cannot be challenged unless it is shown that it involved capriciousness and arbitrariness.

On behalf of the pensioners, COMMON CAUSE has been pursuing the matter over the past two two years. More than 10,000 petitions received by it from small pensioners all over the country were forwarded to the Prime Minister. Representations made to the Government of India by various organisations and associations or pensioners all over the country have invariably been turned down on the plea of financial and administrative difficulties and on the ground that the pension liberalisation beneffits have always been given by the Government on prospective basis and never with retrospetive effect. It was brought out in the arguments on behalf of the petitioners that there were a number of instances in which the liberalisation of pensionary benefits had been given retrospective effect. These instances were cited before the Court.

Mr Anil Divan, Senior Advocate, was assisted by Mr P. H. Parekh Mr Raian Karanjawala and Miss Manik Tarkunde, Advocates.

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