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Mr. M.R.Masani's speech in the course of the discussion
on the Income-tax Bill, 1961, in the Lok Sabha on 19.8.61

Mr. M.R.Masani: Mr. Speaker, I just started to speak yesterday when the House adjourned. I had stated that, in order to understand this Bill, one had to consider the relationship between the tax-collector and the tax-payer. A very delicate relationship had existed throughout history because the tax-gatherer, unfortunately, had been looked upon in all countries and at all times as a not very welcome person, a person who had to be an exacter, a harasser and many times a tyrant. In our own times, much of that feeling still survives.

In a Bill of this nature, legislation of this type, it is important that it should satisfy certain tests so that the relationship that is to subsist between these two categories is as harmonious and mutually considerate a one as possible. Not only are courtesy and consideration due to the citizen, who is the assessee, on the part of the officer, but the citizen has also to appreciate that the income-tax officer is no different from himself. It is not as if all income-tax officers are vindictive in persecuting the assessee; nor as if all assessees are trying to evade their payment of tax and trying to dodge their obligations. I would say that both categories are, by and large, honourable and honest citizens. The income-tax staff does its duty, an unpleasant one, of probing into one's affairs, and we should show it every sympathy and every respect. On the other hand, it is equally important that officers of Government such as income-tax officers, should show the same consideration and respect for the assessees, treating them as honourable citizens, and not start with a prejudice that a man is a potential criminal or tax-evader. I say that because, sometimes, it is assumed that all income-tax officers are good and all assessees bad, and sometimes the other way. And it seems to me both attitudes are equally unfair because, after all, an income-tax officer, if he was not an income-tax officer, would become an assessee himself if he was in another office, and an assessee might easily take a job in the income-tax department, and the roles could be reversed. They are all members of our society and our community. I am saying that because sometimes it is suggested that the tax law should be harsh because we must pursue the evader, as if evasion is a normal pursuit.

Let me, first of all, ask the House to consider whom we are discussing when we talk of the assessee. An assessee is, by and large, a lower middle-class man. He is a man with modest means and, in most cases, a man with a fixed income, in respect of which tax is deducted at the source. It is only a handful of assessees who are rich people and who have diversified sources of income and in whose case the question of evasion or even avoidance at all arises. Just to make this point clear, because I am sure there are hon. Members in this House who keep thinking of the income-tax assessee as somebody rich, somebody to be envied, somebody to be pulled down, I may say that of all those who pay income-tax in our country currently, those with an income of Rs.7,500 a year or Rs.625 a month, a very modest income for a family, those earning Rs.625 or below a month constitute 63.02 per cent of the total body of assessees. Six out of ten of our assessees are lower middle-class people with an income of Rs.600 or less. Going one step higher, 86.84 per cent or 87 per cent of our assessees have incomes of less than Rs.1,250 per month. This shows that all except about 13 per cent of the assessees are middle class people with reasonably comfortable or very modest means, and it is this class of people we are legislating for when we consider a Bill of this nature, and not anti-social tycoons or the rich man who is avoiding his tax. When we forget the rule and make the exception the rule, we are in danger of losing our moorings.

There are reasons why people avoid taxes and evade taxes. My hon. friend, Shri Morarka, in his excellent speech with which we started the debate, pointed out two reasons why evasion becomes rampant. The first reason is that evasion is aggravated or temptation is created, when the level of taxation exceeds reasonable figures, as it does in our own country. As taxation of the higher brackets becomes excessive, as it has become in India, these people resort to evasion. Then it becomes necessary for Company Directors, who should be busy trying to cut down their costs and produce goods for the market at economic prices, to divert their attention to finding ways of avoiding tax, because it is found that the avoidance of tax becomes more profitable than the cutting down of the cost of production! Secondly, as Shri Morarka has stated, a reason for evasion taking large proportions is the feeling that your money is being wasted, that your money, which is taken from you in the form of taxes, is not being applied or utilized in a manner that you would like to see or as it appeals to a reasonable man. When bureaucracy grows, when wasteful State projects are indulged in, when giantism and gigantism take shape in the nature of planning, then the citizen says: "Why should I give my money for this? I will rather keep a little more for myself". This is a phenomenon which is not known only in our country; it is a universal phenomenon. Professor Parkinson, the well-known authority on public administration, in his book The Law and the Profits refers to both these factors. He says:

> "To turn to the predicament of the great majority, it is obvious that some otherwise law-abiding people would evade taxes in any case. Their number would be small, however, if their margin of profit was less. With a tax of about ten per cent of income, the cost of evasion (or even of avoidance) becomes for most people more than the amount of the tax. Even with tax at twenty per cent, the skill now devoted to evading the tax might be more profitably directed toward increasing the income."

But he points out that when the tax goes much higher, then it becomes much more profitable to evade tax than to put in the same effort to produce more, or to earn more in an honest way. Similarly, he says that the wasteful expenditure of modern States, particularly of Welfare States, predisposes the tax-payer to avoid paying tax, because he does not think that his money is put to effective and proper use.

Now, Sir, it is necessary, if we want taxation to be on a sound basis and to be paid properly, that our tax law should be simple and clear. This Bill has tried to simplify our tax law, to make it more intelligible to the layman. I am sure that no member of the Select Committee would claim that we have suceeded in that task. We have moved in that direction. We are glad that we have made some progress. May be twenty or thirty years from now, somebody will be able to put this law into King's English.

Today there are many sections of this law which will require a lawyer or expert to read. Even in the Select Committee, there were occasions when all of us were confused as to what exactly a section meant and we had to invite an official of the Department to explain what a particular clause meant in its effect. When that is the fate of Members of Parliament, what would be the position of the average man in the street or the assessee? We are, therefore, let us admit, a long way away from that simplicity and that clarity which is required of a law of this nature. Even now, there are many parts of income-tax law which will remain incomprehensible to all except income-tax experts and the Central Board of Revenue.

Shri Ranga: Even to them sometimes not.

Shri Masani: The Bill has sought, on the one hand, to simplify the tax measures and on the other hand to tighten up the law so that evasion may be avoided. That, Sir, is a perfectly legitimate pursuit and I think the hon. Minister will agree that no Member of the Select Committee showed the slightest desire to help anyone to evade the law. We all stand with him four square in our desire to see that tax is honestly paid and is capable of being collected.

Sir, the Bill has been improved in the Select Committee in several respects for which, like Mr. Morarka, I too am grateful. I think we owe a great deal to the consideration shown to different points of view by the hon. Minister who piloted the Bill and I am glad that the Select Committee particularly went in for two reforms. One was to extend the exemption of gratuity from taxation. It is true that the exemption is strictly limited and is within unduly modest or restricted limits. Because those limits apply in government service, they have been made applicable to all employees, even outside. I for one cannot accept the logic of that. If an enlightened employer has greater enlightenment than the Government, or is in a better position than the Government, to pay a larger retirement gratuity, I do not see why the benefit of that gratuity should not go to the employee without payment of taxation. The Government of India is hardly a model employer to set the pace for others! As one of those who lag behind, they are trying to restrict the right of other employers to give a generous gratuity. ButI welcome this and I appreciate the action of the Government in accepting this, because it will be a relief to lakhs of modest, lower middle-class employees in employment outside Government to whom this little concession had been denied so far. I am very glad that, even though within limits, this concession has been made.

The second thing about this Bill, as it has emerged from the Select Committee, which appeals to me, particularly as one who occasionally writes, is the consideration that has now been shown to what may be called creative elements in our society - artists, musicians, actors and writers. These classes have been shown consideration in two respects - by being allowed to insure their lives to a slightly larger extent than others and by giving the Department the discretion to allocate their income over a period of years rather than only one year, over three years. This is very important. It is often alleged that screen stars secrete a large part of their salary by taking money in cash and that what they receive by cheque or on the record is only a small part of the fee they are paid. That, I believe, is true. There is large scale evasion and abuse of law at that point. But let us consider a little more sympathetically why it happens. It happens because in a particular year a screen star may perform in a very successful film and he or she may get a very large fee for that. But the lives of screen stars and artists in general is a very short and limited one, particularly in the case of women, with rare exceptions. Authors, while they do not have a short life, enjoy an intermittent one, because inspiration dries up and a man who writes a successful book or novel is not able to sell another book for another two or three years. It is necessary, therefore, that in the interests of encouraging literature and art, we should show a little concession and appreciation of the erratic nature of the earnings of these artists, compared with the rest of us who go to office or go in for business month in monthly out, year in year out.

I am very glad that it has been possible for the Select Committee to show this consideration and one can only express the hope that, given this relief, the proclivity to evade payment of tax, to which I referred just now, will lessen a little in appreciation of what has been done for this class of our people.

Now, Sir, having welcomed certain aspects of the Bill, I would now like to come to other aspects which are not as welcome. I think an opportunity has been missed during this legislation to put right certain inequities and certain unfairnesses that have existed in our tax law. Some of them have been put right, but many others survive. I would like to give only two or three examples which involve broad questions of principle or policy. My remaining disagreements with the Bill, which are embodied in my minute of dissent, I shall deal with when the clause by clause consideration of this measure is taken up next week.

In so far as major issues of policy or principle are concerned, I shall mention two which figure in the report of the Select Committee on the Bill. The first, Sir, is embodied in clause 179 to which my hon. friend Mr. Morarka also made a critical reference yesterday. Sir, the industrial development of this country so far and the industrial development of the leading industrial countries all over the world, whether it is the United States, or Germany, or Britain, or elsewhere, has been based on cooperation about which we all get lyrical, a form of cooperation which was devised in the last couple of hundred years by which people with modest incomes and savings could pool their savings for the purpose of industrial production. That form of cooperation is the joint stock company. The joint stock enterprise was invented by the genius of man in response to the needs of large scale industrial production. Your, Sir, or I, might not have enough to produce even a button. But when you and I and everyone else pool our small resources of Rs.100 or Rs.200 or Rs.500 in the form of shares in a cooperative society called a limited liability company or corporation, we make it possible for all our small savings to be pooled for the production not only of a button, but even of locomotives or steel or something quite big as that. It is the limited liability company that has made possible the industrial revolution in the more advanced countries.

But what is the essence of the limited liability company? It is that our cooperative society or joint stock company has a different personality from ourselves. You and I as shareholders are one thing, but our Company, by whatever name it is called, is a different legal personality. You and I are liable to the extent of our share in the liability of the company, but not beyond. If your share and mine is one-thousandth of the capital of the company, then our liability is restricted to a thousandth part of the liability of the company, and whatever misfortunes the company may suffer, nobody can touch us except to that extent of the money we have invested. This is very fundamental. If we once start monkeying or tinkering with this very sacred principle of limited liability of those who participate in joint stock enterprise, we are in danger of slipping down a very slippery slope, a slope that might destroy this instrument which human ingenuity has devised for the service of man and his needs. It is not a thing to be lightly indulged in. I am sorry to say that in the Bill, as it originally was, there was a violent effort made to break through the structure of limited liability. I am equally sorry to say that the Select Committee was not able to defeat this move and that the mischief has survived in the Bill as it is before the House today. That mischief is found in clause 179 of the Bill which says:

"Notwithstanding anything contained in the Companies Act,1956, when any private company is wound up after the commencement of this Act, and any tax assessed on the company, whether before or in the course of or after its liquidation, in respect of any income of any previous year cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves......."

Kindly mark the words 'unless he proves'

"that the non-recovery can not be attributed...."

There are two negatives.

"to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company."

Originally, the attempt was even more ambitious. It was to make substantial shareholders also liable in an unlimited manner. The Select Committee, seeing the danger, was able to limit it. I feel that the danger and mischief still remain. Once this principle of limited liability is invaded there is no knowing where we shall stop. This means that a man who is invited to become a director of a private company must think a hundred times before he accepts such an assignment, because who knows whether five or ten years later, long after he ceases to be a director of the company and the company goes in for some misfortune, he will be told: "Now you prove that you were not careless, that you did not commit any offence; otherwise, you will be liable." To what extent? Unlimited. For a man with limited resources, his whole fortune or estate may be swept away in paying for the company's liabilities under this clause. Nothing less than this is the meaning of this clause 179. I think it is a pernicious clause and I hope that even now this Parliament can be awakened to the danger of what it involves as a threat to the future of industrial enterprise in this country.

Shri Amjad Ali (Dhubri): What about misfeasance and negligence of duty?

Shri M.R.Masani: Yes; it says:

> "unless he proves that the non-recovery can not be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company."

It is an elementary principle of jurisprudence that you cannot prove a negative. No man can prove that he did not commit a murder; that he did not steal. It is for those who allege the crime to prove it positively. Every man is assumed to be innocent unless he is proved to be guilty. This is the reverse of any decent principle of jurisprudence. Here the man must prove a negative, namely, that he did not do anything wrong. How do you prove that? The onus is on the wrong side. I could have understood this clause - it is not that I would have agreed with it even then - assuming for a moment that limited liability was to be truncated and somebody said that where it could be proved that the director was guilty of these things, he could be proceeded with beyond his limited liability. But that is not the law. The law now suggested is that he will be mulcted. Only if he can prove a negative to the satisfaction of the other side, he may be exempted.

Yesterday, Shri Morarka, quite rightly, argued that this clause was retroactive or retrospective in its operation. He rather gently conceded that he might have been wrong, but I would like to assure him that he is right in saying that the operation of this clause is retrospective or retroactive.

An Hon. Member: Very modest.

Shri M.R.Masani: It means that a man who was a director before today, or a few months ago or, maybe, a year or two ago, who took on the obligation of directorship as the law then laid down which was that he would not be liable beyond his share in the company, when we pass this Bill this month or next month he becomes liable for something that happened before the Bill was made operative. He comes under a new liability created retrospectively for him.

Shri Naushir Bharucha: You are referring to new directors coming in.

Shri M.R.Masani: You insist on misunderstanding him. I understood him correctly.

Shri C.D.Pande : It should be made applicable to newcomers.

Shri M.R.Masani: Shri Morarka's argument was that if it was now said that from now on anyone who becomes a director with full knowledge of what the law is and is subjected to this, he does not seem to mind it. But I mind it even then for I think it is against limited liability. But I understand his argument. He is quite right. It has been a very well understood principle of jurisprudence never to create a crime or an offence retroactively, never to levy a new punishment for something which has already happened; in other words, never to punish anybody for something which was not criminal or an offence at the time it was done.

These are semi-penal provisions. This is quasi-criminal jurisdiction. You are mulcting a man beyond the normal law of the country. Is it right that, living as we do under a free society and a democratic government, we should depart so lightly and so cheerfully from well established principles of jurisprudence throughout the free and democratic world? I think there are dangers here of this country being taken away from the moorings in which we have been brought up, the Anglo-Saxon principles of jurisprudence which have been the foundation on which our individual liberties and our fundamental rights are today guaranteed. We may certainly develop them, but let us not destroy them. Therefore I want to state my complete dissociation and opposition to clause 179, against which I shall vote.

Confidence is a very delicate plant. We, on the one hand, talk about increasing production and ask people to serve the country by producing and then we pass or try to pass a law like this, which strikes at the root of that confidence. I certainly would not become a director of a private limited company after this clause is passed. I would consider it putting myself in great jeopardy, because I would not be the sole person who would decide whether I should get into trouble or not, and then ten years later go and prove that I was not responsible for carelessness. It is something that is asking too much of human nature.

Clause 79 is also responsible for a similar departure from sound principle. Clause 79 is on the subject of carrying forward and setting off of losses. How does it offend against the principle of corporate entity and limited liability? As I said earlier, a joint stock company or a corporation is a separate entity from the human beings who make it up. It is a notional entity. It has a personality and identity of its own. Clause 79 says that unless you can prove that 51 per cent of the voting power in a company at a particular time is held by those same people who held it sometime earlier, you cannot carry forward or set off losses. In other words, again, in this matter the human beings who make up the company and the company itself are sought to be mixed up. The corporation remains a corporation even if every single human being has died and new people have come in. If every share has changed hands, the corporate enterprise remains the same corporate enterprise. This is the very foundation of company law. To say that a majority of those who were there must remain a majority of the present company is going behind the very essence of a company. We are not here concerned with human beings. We are concerned with corporate enterprise.

Again, in this case of clause 79, by trying to look behind the company and into the persons or the human beings involved, we are violating a fundamental concept of Company Law. I, therefore, feel that both these clauses need to be reconsidered and I do hope that whatever feeling or opinion can be expressed in the House may even at this late stage make it possible. Otherwise, no one who believes in these principles of limited liability and corporate enterprise can possibly identify himself with these clauses.

I now come to the second main point of principle. That concerns charitable institutions. Charitable institutions are dealt with by clauses 11, 12, and 13 of the Bill. Here again, may I say, because I want to be fair at every stage to the hon. Minister and to the Select Committee, that arising out of the discussions that took place considerable improvement has been made in all these clauses and a point of view that charity should not be hampered and that difficulties should not be placed in the way of those who run charitable institutions has found partial acceptance. But unfortunately certain blemishes remain. At this stage, I shall deal only with one of them, a matter to which reference has been made already by the hon. Minister in his opening speech, and that is in regard to denominational charities, charities that are for the benefit of particular denominations or sections of our people, not of all people without discrimination.

I hope every hon. Member knows that I am not interested myself in denominations. I have never regarded myself or any other citizen of this country as being anything but an Indian first and last. I am not interested in communal or religious or any other divisions, and to me the idea of giving money to people of one kind or one race or one religion or one origin is absurd. It would not occur to me and if I wanted to give money to a charity I would give it to a good charity, whoever benefited from it would not concern me very much; certainly not what religion, race or community they belonged to.

But I am not legislating for myself and my hon. friend is not legislating for himself. We are supposed to legislate for human beings in our country as we find them. That is part of democracy, that we do not imagine people to be different from what they are. The luxury of imagining that people are different from what they are should be left to fascist and communist dictators; democrats have to legislate for human beings as they are. Yes, Sir, by legislation we certainly try to push society further, to help the right instincts and to discourage wrong instincts. But there are definite limits within which the function of legislation, this educational function of legislation, can be practised. I say you cannot make men good by coercion; you cannot make men nationalists by taxation. Today the average Indian - whether we like it or not, let us face it, everyone in public life knows it to his cost - is not an Indian first and last. He certainly is an Indian. But he also is either a Hindu or a Muslim or a Parsi or a Christian. He also is a Brahman or a non-Brahman or a Kshatriya or a Harijan or something else. He has many consciousnesses; he has not got just one national patriotic consciousness. What I say is known to be true by every one of us here. We may pretend for public consumption that it is not true but it is true. Our public life is infested by caste and communal considerations. I deplore it. I deplore it as much as my hon. friend the Finance Minister, and I shall join hands with him in trying to educate our people against that trend.

But, while most people in our country feel as Hindus or Parsis or Christians or Catholics or Brahmans or non-Brahmans or Harijans, are we in a position to say: "Only <u>that</u> is charity which is given to an institution where these distinctions do not pertain?" That the moment you give it to people who are nearer to you by birth or religion or part of the country or language, that it becomes invalid, it ceases to be treated as charity, it has to be treated as business. This, Sir, is the meaning of two clauses in the Bill as it has been reported upon by the Select Committee. I refer to clause 88(5)(iii) and clause 13(b).

Mr.Chairman: The hon. Member's time is up.

Shri M.R.Masani: Mr. Chairman, you will kindly give me more time.

Mr.Chairman: He has taken half an hour.

Shri M.R.Masani: If I may say so, there are not too many speakers who will be interested in this and you may therefore give a few of us time.

Clause 88(5)(iii) is an old clause. Even under the present law it has been laid down that if a donation or a charity is made to an institution which is confined by race, religion or characteristics of that kind, it shall not be free of tax. I do question that, and I think it is a good opportunity to remove this unfortunate ban.

It has been said that "charity begins at home." But the Bill would like to suggest that charity should begin at the other end: you may givd it to a stranger or a man who is remote from yourself, a man in Madras may give in charity to somebody in the North but not to any Tamil-speaking people, because then it would become communal, it would become linguism! This is all wrong. It is true that the wider our charity becomes the better. Why confine it to India? Why not look forward to the day when we can think of our fellow human beings in any part of the world - in Africa or in Europe or in America or in the Far East - as our brethren? I look forward to that day. But surely, we are not going to say: "Unless your charity is universal, if it is parochial and national, it is not going to be tax-exempt"!

Similarly, if a man is limited in his outlook, if he thinks of his caste, his community, his language, his family, his clan, his tribe, you may say that he has a limited mind. But are you going to punish him? Are you going to say: "I do not think it is a good charity"? Normally, the selfishness is expanded: first you think of yourself, then you think of your family, then of your relations, and then of your clan or your tribe, and so on. And ultimately you think of the nation and the world and humanity.

Every step forward should be encouraged and not retarded. What will be the result of this? The result of this banning of donations to this extent will be that a man who wants to give a donation will say: "Oh, you want to tax it, then I won't give it to charity". He will keep the money and hoard it. Is that what we want? The result of this clause on donations is that it dries up the springs of charity. Instead of encouraging a man to be charitable, you are retarding the charitable instinct and you give him an excuse to say: "If you want to tax it, I will not give it".

Whom are we helping by this? Does it get wider or narrower? It will only encourage the selfishness of the man and give him an excuse for not doing the right thing.

Therefore, I say that you cannot legislate men into nationalism. As an educative process, we could all try it. It will take a long time. Meanwhile, let us accept people as they are.

Then we come to a new clause where this principle of donations being discriminated against is being applied for the first time to the charity itself. Clause 13(b) is a very dangerous clause. This was not in the Bill. The Bill as circulated to the public, as read by the people, the Bill on which evidence was led before the Select Committee, did not have this clause. But clause 13(b)(i) smuggles in, for the first time, a provision which makes a violent departure. Shri Naushir Bharucha was perfectly right in pointing out two days ago that nobody outside except a few of us here, even know that this is being proposed. The thousands of the so-called charities, which, after all, help lakhs of our people - whether communal or not - do not know what is being planned. They do not know that a new clause is being brought in which will make a similar activity in future punishable by taxation. This is a most dangerous provision. I am sure that, if it had been in the original Bill, a howl of protest would have gone round the country, the press would have taken cudgels, and evidence would have been led before the Committee which would have persuaded the Committee to modify the Bill. But because the clause was not there and because it was sprung on the Select Committee and adopted, we now have a clause which is in danger of being passed without Parliament and the people knowing what is being done.

This clause says:

"Nothing contained in section 11 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof -

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(b) in the case of a trust or charitable or religious institution created or established after the commencement of this Act

(i) if the trust or institution is created or established for the benefit of any particular race, religious community or caste".

I oppose this sub-clause. I think it is an unfortunate, a misguided effort to do the right thing in the wrong way. It amounts to this - that money that would have gone to needy people would now be grabbed by the Government as part of income-tax. It is an attempt to enforce "secularism" by the wrong method, by legal coercion, which is bound to defeat itself. This will not stop people being communal. This will only stop them from doing in an open and decent way what they want to do. If a man wants to help his own kind, his own clan, his own religion, or his own language, he is going to do it. No amount of laws like this is going to stop him. He will do it in an underground way, he will do it privately, unofficially, informally. He will not show it.

Lastly, since you wish me to conclude, I come to my third point, and that is about a Government amendment of which notice has now been given after the Select Committee has become _functus officio_. The hon. the Finance Minister has given notice of nine amendments. Most of them are perfectly unexceptionable and I have no objection to them, because they do not materially make any change, but there is one amendment against which I must raise my voice. That is amendment No. 9, the last amendment in List II. It seeks to amend a clause which the Select Committee has recommended.

Shri Prabhat Kar: He has tabled more amendments today.

Shri M. R. Masani: I am not up-to-date. I cannot keep abreast of the Finance Minister's changes of mood and mind. I am trying to keep abreast of them.

I am referring to pages 157 and 158 of the Bill. There is clause 243. This clause was passed by the Select Committee. The hon . Finance Minister was a party to it. It reads as follows:

"(1) If within a period of six months from the date on which a claim for refund is made under this Chapter, the Income-tax Officer does not grant the refund, the Central Govt. shall pay the claimant simple interest at four per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of six months aforesaid to the date of the order granting the refund."

There is an Explanation which says: "If the delay in granting the refund within the period of six months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable."

It says that the issue whether a period should be excluded or not will be determined by the Commissioner whose decision would be final.

A very reasonable clause, a good clause and, as Shri Morarka said yesterday, a clause meant to help in expediting settlement of income-tax cases. Hardly was the ink dry on the report when the Finance Minister came forward with this amendment, at the instance of his Department, which is now amendment No. 9, which says:

"If the Income-tax Officer does not grant the refund,

(a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividend within three months from the date on which the total income is determined under this Chapter,

(b) in any other case, within six months from the date on which the claim for refund is made under this Chapter....

What it does is to postpone the payment of interest from six months after the claim to three months after the determination of the claim. The amendment which the Finance Minister now seeks to introduce forgets to mention how much time may pass between the making of the claim and the making of the determination. It could be three months, it could be three years, it could be thirty years. I am not saying that it will that. Here, we are subjecting the citizen to the mercy of the bureaucracy and the administration which, by keeping a claim dangling, can deny his right to interest. In other countries, a very serious view is taken of this. In the United States and in Britain, it is believed that the man is entitled to prompt refund. He may be a man of modest means. He may need the refund to carry on his livelihood. By delaying payment, you are denying him his livelihood and therefore you pay interest. You are compulsorily borrowing his money. It is his money. You are detaining it. If you detain it without his consent, the least you can do is to pay him interest.

Why this amendment? The Select Committee, as a whole, decided on that in order to give an incentive to the Income-tax department to get on with assessments. We know they are notoriously slow in disposing of assessments of even small people. Even small peoples' assessments are often kept pending for two or three years, for no reason at all, except that the Income-tax Department has its hands full. As I said in the beginning, I have sympathy for the Income-tax Officers. If they are over-worked, let there be more of them. But, certainly, you cannot first say that you have not got enough of Income-tax Officers and then ask the citizen to wait for years and say that you cannot pay interest. That does not seem to be right. If the Finance Minister is satisfied that the Taxation Department is inadequately staffed, let him develop it. I am sure he will realise ten times the amount that he will be spending on the salary of these very low paid people. I am not against more Income-tax Officers being employed. I am not unsympathetic to the Income-tax staff. I am saying: It is not my business as an assessee whether you do your job properly or competently. It is your business to see that you do your job properly. It is your business to do it. If you keep me waiting, you must pay me. I think it is an unfortunate thing that this amendment should come before the House, when the Select Committee had laid down a very sound principle in clause 243that in all cases, in six months after a claim, you either meet the claim or deny it or you start paying interest.

What are those cases where this lopphole is sought to be opened for keeping the amount dangling for years? It says:

"In any case where the total income of the assessee does not consist solely of income from interest on securities or dividend."

Let us imagine - a man is a clerk. He gets Rs.400 a month as salary. He happens to have two or three shares which bring Rs.25 or 30 a year. He comes under this clause. His income is not solely from dividend. It is partly earned income and partly income from investment. Under this clause, you may keep him waiting for years! You may say, no,until I determine your claim and three months thereafter, your interest will not run. In the end, it may be established that the money was due to him.

Shri Morarji Desai: May I say, Shri M.R.Masani knows which are the cases that would come here. This is not a case which would come.

Shri M.R.Masani: I point out what the law is. What the hon. Finance Minister has in his mind may be something different. It is said that there are complicated cases where six months would be too short. Let them be described. That is not the reality. The reality, as the hon. Member says, is that small men's cases are kept waiting for two or three years.

Shri Morarji Desai: It would not be.

Shri M.R.Masani: This would be a way of allowing that to happen even now. TheFinance Minister was a party to the Select Committee decision which sought to stop it. It was to stop that that the Select Committee unanimously accepted this clause. This is back-tracking within a few days. I say that the persons whose income is ddscribed here are not big financial institutions or individuals who pay lakhs in income-tax but any one whose income is partly from dividend and part from something else. Many middle class people have income partly from dividend and partly from salaries or business income. The moment you find that the income ~~ix~~ is from more than one source, the Income-tax Officer can say: you wait for my decision. I am pointing out that within the scope of this clause, it is so. If six months is too short, make it twelve months. I am agreeable. In place of this amendment, in hard cases, if twelve months are given, I do not mind. But, here is an indefinite postponement of the right which the Bill proposes to give, as reported by the Select Committee. I think it is an unfortunate and retrograde amendment. I hope even now the Finance Minister will not move it at all.

There are two or three instances where I have shown that broad policy or principle dictates second thoughts in regard to the contents of the Bill. In regard to other matters, I shall reserve what I have to say till we discuss the clauses next week.

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