

NINETIETH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1994-95)

(TENTH LOK SABHA)

ASSESSMENT OF LOTTERY BUSINESS

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

**[Action Taken on 8th Report of Public Accounts Committee
(10th Lok Sabha)]**



Presented to Lok Sabha on 24.03.1995
Laid in Rajya Sabha on 24.03.1995

LOK SABHA SECRETARIAT
NEW DELHI

March, 1995/Phalguna, 1916(Saka)

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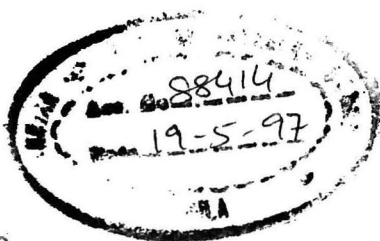
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COMPOSITION OF PUBLIC ACCOUNTS COMMITTEE
(1994-95)

Shri Bhagwan Shankar Rawat—*Chairman*

MEMBERS

Lok Sabha

2. Shri Bandaru Dattatraya
3. Shri Anil Basu
4. Shri Dilcep Singh Bhuria
5. Sqn. Ldr. Kamal Chaudhry
6. Dr. K.V.R. Chowdary
7. Shri Sharad Dighe
8. Shri Jagat Veer Singh Drona
9. Smt. Krishnendra Kaur (Dcepa)
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11. Shri Mrutyunjaya Nayak
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15. Shri S. B. Thorat

Rajya Sabha

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18. Shri Triloki Nath Chaturvedi
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20. Shri Murasoli Maran
21. Smt. Jayanthi Natarajan
22. Shri G. G. Swell

SECRETARIAT

1. Shri Murari Lal — *Joint Secretary*
2. Smt. P. K. Sandhu — *Director*
3. Shri P. Sreedharan — *Under Secretary*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Ninetieth Report on Action Taken by Government on the recommendations of the Public Accounts Committee contained in their 8th Report (10th Lok Sabha) on Assessment of Lottery Business.

2. In their earlier Report, the Committee had emphasised the need to take preventive and effective steps to arrest large scale avoidance, under assessment and short levy of tax in the lottery business resulting in substantial loss to the national exchequer. In this Report the Committee have noted with surprise that even after the expiry of about four and a half years, the Ministry of Finance have not been able to get expedited the Study entrusted to the National Institute of Public Finance and Policy for revamping the system for assessment of income from lottery business. They have desired that conclusive action be taken in the matter within a period of three months and reported to them.

3. In their earlier Report the Committee had pointed out that most of the State Governments were not seriously following the guidelines issued by the Ministry of Home Affairs in 1984 and thereafter in regard to conduct of State lotteries and lotteries permitted by the State Governments/Union Territory Administrations. They had recommended that in order to achieve uniformity and effective control and to avoid malpractices in lotteries organised by various State Governments/Union Territory Administrations, the Government should consider the question of bringing in a suitable legislation. In this Report, the Committee have regretted to note that no concrete action has thus far been taken by Government on the lines suggested by them. The Committee while reiterating their earlier recommendation have observed that if the Government held a considered view against conducting of lotteries they should come out with suitable legislation and/or steps banning lotteries altogether. On the other hand, if it is felt desirable to allow lotteries to be continued on revenue considerations, adequate steps should be taken as suggested by the Committee to make a uniform legislation with a view to exercising effective control and curbing malpractices in lotteries.

4. The Report was considered and adopted by the Public Accounts Committee at their sitting held on 13 March, 1995. Minutes of the sitting form Part-II of the Report.

(vi)

5. For facility of reference and convenience the recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in Appendix to the Report.

6. The Committee place on record their appreciation of the assistance rendered to them in the matter by the office of Comptroller and Auditor General of India.

NEW DELHI;
20 March, 1995

29 Phalguna, 1916 (Saka)

BHAGWAN SHANKAR RAWAT
*Chairman,
Public Accounts Committee.*

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by the Government on Committee's recommendations and observations contained in their Eighth Report (10th Lok Sabha) on Paragraph 2.01 of the Report of C&AG of India for the year ended 31st March, 1989 (No. 6 of 1990), Union Government (Revenue Receipts—Direct Taxes) relating of Assessment of Lottery Business.

2. The Eighth Report which was presented to Lok Sabha on 26 February, 1992 contained 19 recommendations. Action taken notes have been received in respect of all the recommendations and these have been categorised as follows:

- (i) Recommendations/observations which have been accepted by the Government:
Sl. Nos. 5,6,11 and 19.
- (ii) Recommendations/observations which the Committee do not desire to pursue in the light of replies received from Government:
Sl. Nos. 1,7,9,10,13,14 and 18.
- (iii) Recommendations/observations, the replies to which have not been accepted by the Committee and which require reiteration;
Sl. Nos. 4 and 17
- (iv) Recommendations/observations in respect of which the Government have furnished interim replies:
Sl. Nos. 2,3,8,12,15 and 16

3. The Committee are deeply concerned to note that even after a lapse of three years since presentation of their Report, the Ministry of Finance have failed to furnish the final replies on the recommendations at paragraphs 80, 81, 86, 90, 93 and 94. The Committee deprecate the casual approach on the part of the Ministry in the matter and recommend that the final replies to the recommendations in respect of which only interim replies have so far been furnished should be expeditiously submitted after getting them duly vetted by Audit.

Streamlining of system for assessment of lottery business

4. Lotteries organised by the Government of India or the Government of a State appear in the Union List in the VII Schedule to the Constitution of India and Parliament is vested with the powers to make laws governing such lotteries. Lotteries organised by any other agency come under the

general entry "Betting and gambling" in the State List, and would be subject to regulations by Acts enacted by the respective States. The legislation regarding the private lotteries is enacted by the State Government under the powers conferred by entry 34 of the State List of the VII Schedule of the Constitution.

5. There is no separate provision of law governing the assessment of income from lottery business. Therefore, income from lottery business is computed in the same manner as the income from most other business, under Sections 28 to 44 of the Income Tax Act, 1961. The Committee in their Eighth Report (10th Lok Sabha) while examining the system of assessment of lottery business under the income tax law had observed that tax collection from the lottery business which was a potential source for raising revenue had hitherto remained largely neglected. Consequently, wilful and planned attempts were on the increase to avoid payment of tax by adopting questionable means. There was no coordination between the Ministries of Finance and Home Affairs in regard to assessment of lottery cases. The State Governments were not seriously following the guidelines issued by the Ministry of Home Affairs. There had been large scale omissions to bring the recipients of winning tickets to the tax net and there was large scale avoidance/under assessment of the taxes. Further, exemptions from payments of tax granted to Social Welfare Societies/organisations were not regularly reviewed. Emphasising the need to arrest large scale avoidance, under assessment and short levy of tax in the lottery business resulting in substantial loss to the national exchequer, the Committee had recommended that all the preventive and effective steps should be taken immediately in the light of their various recommendations in the report.

6. The recommendations of the Committee and the action taken notes received thereon from the Ministry of Finance (Department of Revenue) are reproduced in the relevant Chapters of the report. The Committee will now deal with the action taken by Government on some of their specific recommendations.

7. In para 80 of their report, the Committee had observed that the total collection from tax deducted at source under Section 194-B of the Income Tax Act, 1961 from winnings from lottery or cross-word puzzles had considerably increased. The Committee were surprised that still the Central Board of Direct Taxes (CBDT) had not initiated any exercise to assess the profits in this trade, even decades after the operation of the schemes in the States. The Committee had recommended that CBDT should assess the profits in the lottery business for the purposes of framing realistic estimates of tax collection and taking adequate preventive steps to curb leakage of revenue. In paragraph 81, the Committee had also

recommended that the effectiveness of the existing procedure for assessment of income from lottery business should be evaluated with a view to further revamping it. Further, in paragraph 86 of their report the Committee had recommended:—

“The audit paragraph reveals yet another lacuna leading to under-assessment or avoidance of tax in the matter relating to the expenses claimed by the persons engaged in the lottery business. The Committee are surprised to find that the expenses claimed and allowed not only varied from assessee to assessee but there was also no relationship whatsoever of these expenses with the turnover. Even in cases with high turnover, running into crores of rupees, the accounts were replete with claims for disproportionately high expenses, which reduced the profit margin for assessment purposes to a very low level. What is more distressing is the fact that there has not been detailed examination of the accounts of the assessee by the assessing officers so as to bring the actual income to tax. The Committee are deeply concerned over this dismal state of affairs. The Revenue Secretary assured the Committee during evidence that the matter was proposed to be got examined by the expert body for evolving concrete guidelines to overcome this lacuna. The Committee emphasise that the proposed study should be got conducted urgently and the guidelines evolved as a result thereof should be introduced within a period of six months.”

8. In their action taken notes the Ministry of Finance (Department of Revenue) have stated that they had requested the National Institute of Public Finance and Policy on 19.09.1990 for undertaking a study to identify factors which were important in determining true income of persons engaged in lottery business. According to the Ministry, from time to time the Institute had been reminded for early submission of the study report; however, the report was still awaited (as on 21.2.1995). The Ministry in their note added that on receipt of the study report suitable guidelines will be issued to the field officers in order to assess the correct income of the persons engaged in the lottery business.

9. The Committee are surprised to note that even after expiry of about four and a half years, the Ministry of Finance have not been able to get expedited the study entrusted to the National Institute of Public Finance and Policy for revamping the system for assessment of income from lottery business. The Committee deplore the delay and desire that conclusive action be taken in the matter within a period of three months and reported to them.

Conduct of lotteries

10. The Committee were earlier informed that though Parliament was entitled to make a legislation on lotteries, no law has been legislated so far. Also, no rules were framed for regulating the conduct of lotteries. The

Committee were during examination informed that no legislation had been made on the subject since the policy of Government of India had always been to discourage lotteries. However, the Ministry of Home Affairs had issued certain guidelines to the States and Union Territories *vide* their letter dated 27.6.1984 to bring about some discipline and uniformity in respect of State lotteries. The States and Union Territories were also requested to keep those guidelines in view while determining the conditions under which private lotteries were to be authorised by them. The matter was subsequently stated to have been followed up by the Ministry of Home Affairs with the State Governments/Union Territory Administrations through the issue of several communications. Emphasising the need for bringing uniformity, exercising effective control and avoiding malpractices in the conduct of lotteries, the Committee in paragraph 82 of their 8th Report (10th Lok Sabha) had recommended:—

“The Committee regret to note that most of the State Governments are not seriously following the guidelines issued by the Ministry of Home Affairs in 1984 and subsequently in regard to conduct of State lotteries and lotteries permitted by the State Governments/Union Territory Administrations. Further according to the Ministry of Home Affairs so far as the schemes of different State Governments regarding lotteries are concerned the rules differ from State to State. Further, the rules regulating the conduct of lottery did not provide for the State Government being informed of the details of the persons engaged for running the lotteries by the organising agents/sole selling agents. According to the Department of Revenue it would be useful if the rules regarding the conduct of lotteries were such that the State Governments could ask for such details from the organisers of lotteries. The Department of Revenue have already taken up this matter with the Ministry of Home Affairs. The Committee urge upon the Ministries of Home Affairs and Finance to take the desired corrective action in the matter at the earliest.

The Committee also recommend that to achieve uniformity, effective control and avoiding malpractices in lotteries organised by the various State Governments/Union Territory Administrations Government should consider the question of bringing in a suitable legislation.”

11. The Ministry of Finance (Department of Revenue) in their action taken notes stated as follows:—

“It is the Ministry of Home Affairs which frames guidelines and regulates conduct of Lottery Business. According to the Home Ministry, the State Government have been reminded, from time to time, of the various guidelines issued by the Ministry on the conduct of lotteries. As regards framing of rules that would enable the State Governments to ask for details of the persons engaged for running

the lotteries by the organising agents/sole selling agents, the desirability of such a step is once again being impressed on the States.

In this connection, the Home Ministry has already written to the State Governments/UTs vide letter No. V-21011/8/90/VPA-IV dated 17.1.1991. They are being reminded on the issue. Private lotteries are covered under Entry 34 of the State List in the Seventh Schedule to the Constitution. The State Governments can enact legislation and frame rules applicable within their States in respect of private lotteries.

Lotteries organised by Government of India, State Governments and UT Administrations are covered under Entry 40 of the Union List in the Seventh Schedule to the Constitution of India. However, there is no proposal at present to bring in any Central Legislation.

The Home Ministry has also issued instructions to the State Governments/UTs vide letter No. V-21011/9/90-GPA-IV dated 23.7.1992.

Under the Income-tax Act 1961, the provisions of section 194-G inserted through the Finance Act, 1991 (No. 2) will help in obtaining the information regarding organising agents/sole selling agents engaged in the lottery business. As per the provisions of this section, any person who is responsible for paying to any person who is or has been stocking/distributing/or selling lottery tickets, any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding Rs. 1000 shall, at the time of credit of such income to the account of the payee deduct income-tax thereon at the rate of 10%. The provisions of deduction of tax at source, in this regard, will certainly help in enlarging the information base for Income-tax Department."

12. In their earlier report, the Committee had pointed out that most of the State Governments were not seriously following the guidelines issued by the Ministry of Home Affairs in 1984 and thereafter in regard to conduct of State lotteries and lotteries permitted by the State Governments/Union Territory Administrations. They had also recommended that in order to achieve uniformity and effective control and to avoid malpractices in lotteries organised by the various State Governments/Union Territory Administrations, Government should consider the question of bringing in a suitable legislation. The Committee regret to note from the action taken replies received that no concrete action has thus far been taken by Government on the lines suggested by the Committee. The Ministry of Home Affairs have simply issued another Circular to the State/Union Territories reiterating their earlier guidelines on the subject. As regards legislation, it has merely been stated that there was no proposal at present to bring in any Central legislation without indicating whether the matter

was examined afresh in the light of the facts brought out in the Committee's report and if so, the considerations which weighed against accepting the recommendations of the Committee. Evidently, the issue has not been examined with the seriousness that it deserved. Pertinently, during the course of the examination of the subject, the Ministry of Home Affairs had earlier maintained that the policy of the Government of India had always been to discourage lotteries and therefore they had not legislated on this field. The Committee are of the opinion that if the Government hold a considered view against conducting of lotteries they should come out with suitable legislation and/or steps banning lotteries altogether. On the other hand, if it is felt desirable to allow lotteries to be continued on revenue considerations, adequate steps should be taken as suggested by the Committee to make a uniform legislation with a view to exercising effective control and curbing malpractices in lotteries. The Committee, therefore, reiterate their earlier recommendation and would like to be informed of the precise action taken in the matter.

Reopening of summary assessment cases

13. While dealing with a case wherein an assessee, whose assessment was finalised under the summary assessment scheme, had not returned agents commission and sole selling agents commission in his relevant tax returns, the Committee in paragraph 95 of their report had recommended as follows:—

“The Committee find that a registered firm had not returned agents' commission and sole selling agents' commission aggregating Rs. 2.70 crores in two assessment years 1985-86 and 1986-87. The assessment for year 1986-87 had also been finalised as summary assessment. The Department have accepted the objection for assessment year 1985-86. For the assessment year 1986-87, where the under assessment involved was as high as Rs. 1.87 crores, the Department have stated that the assessment has been done under Summary assessment scheme and enquiry and remedial measures would involve the conversion of the summary assessment case into scrutiny case which is against the policy of the Government as the audit point is not covered by the prescribed adjustments. Further, according to the Department, if the assessment completed under the Summary Assessment Scheme are allowed to be disturbed in a routine manner, the whole idea underlying the schemes, would be negated. The Committee are unable to agree with the views of the Department and are convinced that the summary assessment scheme should not prevent them from reopening of the cases and taking proper action in important cases where a large revenue is at stake. The Committee recommend that in the interest of revenue and also with a view to instil fear in the minds of the tax evaders the Government should consider the question of reopening of the assessments on the basis of subsequent positive information, in such cases where there is reported

under-assessment/short-levy of tax involving heavy amount. The Committee would like to know the concrete action taken in this regard within a period of six months."

14. In their action taken note the Ministry of Finance (Department of Revenue) have stated:—

During the course of oral evidence of the Department held on 23.10.1990 on Para 2.01 of the Report of the C&AG for the year ending 1989-90 relating to assessment of lottery business similar issues were raised in Point No. 23 arising out of that evidence. In respect of Point No. 23, it was stated that the Department had introduced the scheme of summary assessment in order to speed up the disposal of the Income-tax assessments with the manpower available and reduce the ever increasing workload. If the assessments completed under the summary assessment scheme are allowed to be disturbed in a routine manner the whole idea underlying the scheme, namely, the expeditious disposal of assessment to reduce the increasing workload will be negated. Besides, this procedure would lead to better assessment of other cases where large revenue is involved. Hence the decision not to insist on the withdrawal of administrative instruction in this regard was taken with the approval of the then Finance Minister.

Instructions have also been issued to the field formations on 14th January, 1992 to retrieve the revenue in cases where mistakes have been detected by Audit and reported in their Audit Report for 1989-90 and 1990-91.

15. While examining a case wherein an assessee, whose assessment was finalised under the summary assessment scheme for the year 1985-86 and where an under assessment to the tune of Rs. 1.87 crores was subsequently detected, the Committee had observed that the Department had not reopened the case since it involved conversion of a case from summary assessment scheme to the scrutiny assessment scheme which according to the Ministry was against the policy of the Government. The Committee had recommended that in the interest of revenue and also with a view to instil fear in the minds of the tax evaders the Government should consider the question of reopening of the assessments on the basis of subsequent positive information in such cases where under assessment/short levy of tax involving heavy amounts were reported. In their action taken note, the Ministry of Finance (Department of Revenue) while reiterating their position with regard to reopening of summary assessment cases, have stated that instructions have also been issued to retrieve the revenue in cases where mistakes have been detected by Audit and reported in the Audit Reports for the subsequent two years. The Committee cannot remain fully satisfied with this. They feel that instead of restricting such retrieval action to the two subsequent Audit Reports only, the CBDT

should issue suitable instructions to officers concerned for enabling them to reopen all cases of assessments where under assessments/short levy involving sizeable amounts have been subsequently pointed out by Audit or noticed otherwise, so as to safeguard revenue interests of Government as also to check the tendency to evade taxes.

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation of the Committee

The Committee find that due to lack of serious efforts on the part of the Department of Revenue, there have been large scale omissions to bring the recipients of winning tickets in the tax net for the purpose of regular income-tax and wealth-tax assessments leading to large scale avoidance/under assessment of the taxes. A number of such instances revealed as a result of test check conducted by Audit have been enumerated in para 11 of this Report. For instance, in the cases pertaining to Kerala, 76 winners of prizes ranging from Rs. 5.95 lakhs to Rs. 25.50 lakhs were not enlisted for wealth tax. Similarly, in Punjab, 89 out of 106 prize winners of Rs. 50,000 and above, were not enlisted in the control registers, while in the remaining cases no returns were filed. Similarly in Madhya Pradesh 3 winners were assessable to tax for profits of 7 lakhs and above but no returns had been filed for income/wealth tax purposes as per records. Income-tax involved in these cases was Rs. 1,20,556. According to the audit test check there was an under-assessment of tax to the extent of Rs. 6 crores approximately on various counts in the lottery business. The Department of Revenue have informed the Committee that with effect from 9 April, 1990 the Central Information Branches of the Directorate of Investigation have been directed to collect the information relating to recipients of prize money from the annual statements of TDS filed with the designated officers and to disseminate the information to the concerned assessing officers so as to enable them to take further necessary action under the Income-tax Act and the wealth-tax Act. They have been directed to collect information in respect of prize money of Rs. 1 lakh and above for this purpose. The Committee regret to note that the Department of Revenue/Central Board of Direct Taxes have miserably failed in taking timely and appropriate corrective steps to overcome this large scale avoidance and under-assessment of taxes. They recommend that the position should be continuously reviewed with a view to taking further corrective and preventive steps so as to curb the rampant avoidance/under assessment of taxes.

[Para No. 83 of the 8th Report of PAC (1991-92)-10th Lok Sabha]

Action Taken by the Government

The Committee's recommendation regarding continuous review of the matter for corrective and preventive steps to curb rampant avoidance/under-assessment of taxes is noted.

Central Board of Direct Taxes issued an instruction on 30th April, 1990 regarding long term survey Action Plan for the financial year 1990-91 to 1993-94 (copy enclosed). In this plan the matter regarding 'winning from lotteries or cross-word puzzles' was listed as one of the heads under Code No. 209 for collection of information by the Central Information Branches of the Investigation Wings from statements of tax deduction at source filed u/s 194B. This will help in locating the assesseees who have taxable income/wealth arising out of lotteries/cross-word puzzles and on verification of the statement, the information will be passed on to the assessing officers concerned wherever necessary.

F.No.411/2/92-II(Inv.I)

F.No.241/1/92-A&PAC.II

F. No.415/6/90—IT(Inv.I)
Government of India
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
Central Board of Direct Taxes

New Delhi, the 30th April, 1990

To

Shri
Chief Commissioner of Income-tax

SUBJECT: —*Long Term Survey Action Plan
for the Financial years 1990-91 to 1993-94.*

Sir,

I am directed to forward herewith a copy of the Long Term Action Plan for Survey for the Financial Years 1990-91 to 1993-94 for information and necessary action.

Yours faithfully,

Sd/-
(VINITA CHOPRA)
Director (Inv.)
Central Board of Direct Taxes.

Encl: As above

Copy forwarded to Shri.....
Commissioner of Income-tax for similar action.

Sd/-
(VINITA CHOPRA)
Director (Inv.)
Central Board of Direct Taxes.

**LONG TERM ACTION PLAN FOR SURVEY
FINANCIAL YEARS (1990-91 to 1993-94)**

A long term Survey Action Plan for the period 1990-91 to 1993-94 is being drawn out with a view to achieve maximum results towards the two fold objective of the Department namely widening the tax base and detecting tax evasion by the existing assesseees.

2. The strategy during the current financial year and in the following years of the plan period should aim at achieving the following:—

- (i) To identify all persons having taxable income, who have not hitherto been assessed to tax and bring them into the tax net;

- (ii) To detect and tax the expenditure incurred out of undisclosed income for leading an elitist and ostentatious style of life;
- (iii) To check lavish spending on marriages and other social functions;
- (iv) To detect tax evasion by persons who are assessed to tax but are not disclosing their full income.

3. Despite Section 133A(5) of the Income-tax Act being on statute of a very long time, the provision has not been properly used. It is generally felt that a lot of unaccounted expenditure is being incurred in respect of marriages and other functions which may be held in costly hotels or in private places after making lavish arrangements, but the Income-tax Department has not been able to detect unaccounted expenditure on such functions due to various reasons. A special emphasis is proposed to be laid to this area of work during the financial year 1990-91.

4. The conducting of survey u/s 133A primarily remain the responsibility of the Commissioners of Income-tax as in the past. However, wherever the circumstances and facts warrant, such surveys may also be undertaken by the Investigation Wing.

5. Survey u/s 133B will continue to be carried out as in the past. The plans for carrying out this type of survey will be drawn out by the Directors of Income-tax (Inv.) in consultation with the concerned Commissioners of Income-tax for ensuring that all potential assesseees in the jurisdiction of the Directors of Income-tax (Inv.) start filing returns of income.

6. A Special impetus is required to be given to CIB verification as such verifications have proved very effective in detecting concealment of Income and wealth. In addition to the 85 sources of information identified in the earlier Action Plan of Survey, some new Sources have been identified and added to the earlier list. The monetary limits specified in respect of the said sources have also been suitably modified. Certain other modifications have also been carried out, particularly with regard to Code No. 209 and 210. The revised lists of external and internal sources are as per Annexure I and Annexure II. Each Director of Income-tax(Inv.) should make his own selection of sources from these lists for the purposes of collection and verification of information in a particular year. However, collection and verification of information in respect of sources mentioned at code No. 013, 035, 082, 083, 201 and 209 may be done on a regular basis.

[F.No.415/6/90—II(Inv.I)]

ANNEXURE I

CODE NO.	HEADS	SOURCES OF INFORMATION
001.	Persons who are new Sales-tax registrants with a turn over 5 lakhs and above.	Sales Tax Department
002.	Cases where Sales-tax penalties of over Rs. 10,000/-have been levied.	-do-
003.	New factories registered under the Factories Act.	Inspector of Factories
004.	New Industries registered with the Directorate of Industries.	Directorate of Industries
005.	New licences for bars etc. obtained under the State Excise and Prohibition Laws.	State Excise Department
006.	Information regarding formation of new companies with paid up capital over Rs. 10 lakhs.	Registrar of Companies
007.	Information regarding recently built properties.	Municipal Corporations
008.	Cost of package tours for travel abroad, where an amount of Rs.20,000/-or more is spent per individual.	Travel agencies
009.	Fines and penalties of over Rs. 25,000/- levied by Customs Deptt. and Enforcement Directorate	Collector of Customs Enforcement Directorate
010.	Confiscation of goods valued over Rs. 25,000/	Customs and Excise Deptt.
011.	Customs duty and fines of over Rs. 10,000/- paid by passengers landing at International Airports.	-do-
012.	Information regarding premium exceeding Rs. 10,000 paid on policies.	L.I.C

1	2	3
013.	Expenditure exceeding Rs. 20,000/- incurred by Pvt. parties for booking suites, entertainment or in connection with any function including marriage celebration etc.	Hotels, Clubs etc.
014.	Advertisements in newspapers or magazines in respect of sales/purchase of import/export quotas, imported goods and property offers etc.	Newspapers and magazines
015.	Tent suppliers, caterers where their bill for any function is more than Rs. 20,000/-	Tent suppliers and caterers
016.	Commission of over Rs. 20,000/- received from Finance and Investment Companies.	The concerned companies
017.	Booking of incoming and outgoing wagons.	Railways
018.	Contract work over Rs. 50,000/-	CPWD, PWD, MES & Public Undertakings, Pvt. companies and concerns engaged in building activities
019.	Deposits above Rs. 50,000/- with Public Ltd. Companies, Chit Fund Cos.	Public Ltd. Cos., Finance Cos., Chit Fund Cos.
020.	Application for new issue of Shares/Debentures of companies where the amount of application money exceeds Rs. 20,000/-	Concerned companies
021.	Information regarding sale/purchase of jewellery above Rs. 25,000/-	Jewellers
022.	Information regarding persons for whom interior decoration has been done by spending an amount of Rs. 25,000/- or more.	Interior decorators

1	2	3
023.	All money suits of the value of over Rs. 50,000/- decided in courts.	Registrar of District and High Courts
024.	List of Co-Op. House Building Societies and names and addresses of new allottees.	Registrar of Co-Op. Societies
025.	Information regarding names and addresses of purchasers of houses/shops etc.	House Building Companies
026.	Information regarding transfer of flats/shares of House Building Societies and Companies.	House Building Societies/Companies
027.	New Telephone Connection sanctioned.	MTNL
028.	Names and addresses of race horse owners and amounts disbursed to them.	Race and Turf Clubs
029.	Names and addresses of race-horse trainers and amounts disbursed to them.	-do- & Horse Owners
030.	Names and addresses of race-horse jockies and amounts disbursed to them.	-do-
031.	Names and addresses of race-horse book makers.	-do-
032.	Names and addresses of purchasers of horses at auctions by the Race Club or otherwise registered with them on transfers above Rs. 25,000/-	Race clubs
033.	Information of race winners winning over Rs. 25,000/-	Book Makers and Race Clubs
034.	Duty draw back of over Rs. 1 lakh allowed to various parties annually.	Customs and Excise Department.

1	2	3
035.	Import licence of various types issued of the value of Rs. 1 lakh or more.	Weekly Bulletin of Imports & Exports licences issued by CCI&E
036.	Cash assistance of more than Rs. 25,000/- given to individual parties.	CCI&E
037.	Manpower exported	Ministry of Labour
038.	Travellers cheques of over Rs. 50,000/ issued against cash payments.	Banks
039.	Bank drafts of over Rs. 50,000 issued by the banks against cash payments.	Banks
040.	Telegraphic transfers exceeding Rs. 50,000/- made through banks.	Banks
041.	Information regarding quota of cement/steel/coal of the value Rs. 20,000/or more.	Directorate of Industries, Local Civil Supplies Department
042.	Information regarding booking and registration of new cars, trucks, autorickshaws, taxies.	Vehicle Manufacturers and RTOs.
043.	Compensation paid for acquisition of land for development projects.	Land Acquisition Deptt./ Ministry of Defence.
044.	List of Doctors	Concerned professional Institute.
045.	List of Lawyers	-do-
046.	List of Chartered Accountants	-do-
047.	List of architects	-do-
048.	List of engineers	-do-
049.	Names and addresses of Nursing Homes and Clinics	Medical Journals and Telephone Directory
050.	Payments of over Rs. 10,000/- made by patients to surgeons and doctors.	Records of Surgeons/ Doctors
051.	Payments of over Rs. 10,000/ made by patients to Nursing Homes and Hospitals.	Records of Nursing Homes and Hospitals.

1	2	3
052.	Claims of over Rs. 1 lakh made to Insurance Cos.	General Insurance Co. and all its subsidiaries.
053.	Demurrage paid to the Railways.	Railways
054.	Information regarding godown at ports.	Port Trust Authorities
055.	Demurrage paid at ports.	-do-
056.	Thefts of amounts/goods etc. of over Rs. 50,000/- reported to police.	Police Stations
057.	Electric consumption bills of over Rs. 12,000 p.a. paid by non-industrial users.	Electric Supply Cos.
058.	Information about cycle stand parking spaces and other contracts given for public places.	Local authorities
059.	List of guest houses	Concerned authority licencing
060.	List of residents who have paid sum of over Rs. 25,000/- p.a. to guest houses.	Guest Houses
061.	Names of those who have made investment of over Rs. 50,000 in Bonds etc.	Public Sector Undertaking and Financial Institution issuing bonds
062.	Names and addresses of purchasers of imported cars auctioned by S.T.C. and amount paid by such purchasers.	S.T.C.
063.	Allottees of flats/plots/shops/sold/auctioned by Housing authorities/Boards where consideration exceeds Rs. 2 lakhs.	Housing Development Authorities/Boards
064.	Private Educational Institutes, Study Circles and Tutition Academics.	Telephone Directory/ Survey reports u/s 133B
065.	Names & addresses of bidders or purchasers of	State Transport Authority

1	2	3
066.	stores disposed by State Transport Authority and amount paid where the bids are above Rs. 50,000/ payments of over Rs. 10,000 made by any member to the club.	Clubs.
067.	Payment of over Rs. 10,000/- made to any member in connection with the card games, during any year.	Clubs.
068.	Major bills of over Rs. 10,000/- paid during the year by individuals through credit cards.	Diners club and other credit card giving companies.
069.	Persons declaring assets of over Rs. 5 lakhs to banks & financial Institutions for obtaining loans & over draft facilities.	Banks and Financial Institutions.
070.	Payment of over Rs. 10,000/- per year made by parents for children studying in public residential schools.	Public Residential Schools.
071.	Information regarding transport supply or service contracts etc.	Public Sector Under takings
072.	Information regarding investment over Rs. 50,000/- in National Savings Certificates/CTD Saving Banks/NSS etc.	Postal Authorities.
073.	Payments to authors by publishers.	Publishers.
074.	Payments of over Rs. 50,000/- made to supply contractors for goods sold to the Government.	Director General Supplies and Disposals, Chief Controller of Accounts (Supply) Akbar Road, Hutments Delhi and Controller of Accounts (Supply) at Bombay, Calcutta and Madras.

1	2	3
075.	Advertising Agencies	Indian Newspapers Society
076.	Indian Agents of foreign suppliers.	Department of Supply
077.	Clearing and forwarding agents.	Railways, Air and Sea Cargo booking offices.
078.	Auctioneers	DGs&DI or Ministry of Defence
079.	Payments to Artists for concerts etc.	Deptt. of Culture, Auditoriums etc.
080.	Stock brokers and	Stock exchanges
081.	Payments to Builders & Contractors for work undertaken by Municipal Corp. and City Development Authority.	City Development Authority / Municipal Corporation
082.	Names and addresses of Stockists, Organisers, and Sub-agents receiving service charges, royalty commission etc. for organising lotteries.	Concerned authority in the State Government.
083.	Names and addresses of persons liable to deduct tax at source u/s 199B in respect of payments of winning from lotteries.	Concerned Authority in the State Government.
084.	Information regarding annual rents/letting out value of Rs. 1 lakh or more.	Municipal Corporation
085.	Names and addresses of single parties for whom goods of 25 trucks or more were transported.	Transport agents
	[F.No. 415/6/90-IT(INV.I)]	
201.	Transfer of immovable properties.	371 forms received by appropriate authorities under Chapter XXC.
202.	List of Commissions paid & received over Rs. 20,000/-	Assessing Officers

1	2	3
203.	Information about wealth which has passed to the heir/s.	Scrutiny cases / Wealth tax records.
204.	Information gathered during the course of search u/s 132 in respect of parties other than those being searched.	Investigation Wing.
205.	Information gathered about assessee during the course of survey u/s 133A.	Investigation Wing
206.	Salaries and perquisites of Directors / Managing Agents etc. where basic pay is over Rs. 36,000/- p.a.	Department of Co. Affairs / Annual reports of Public companies.
207.	Winning from horse races exceeding Rs. 10,000/-	Statements filed by Race Clubs u/s 194BB.
208.	Intimation of purchasers and sellers of goods above Rs. 50,000/-.	Assessing Officers.
209.	Winning from lotteries or crossword puzzles.	Statements filed u/s 194B.
210.	Details of employees from whom TDS is made.	Statements u/s 206A.
211.	Payments over Rs. 10,000/- made by producers of cinematograph films.	Statements filed u/s 285B.

[F. No. 415/6/90—IT (INV. I)]

Recommendation of the Committee

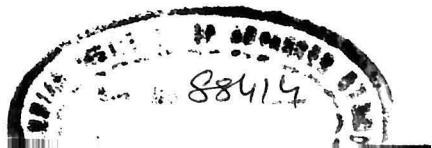
The Committee find that large scale avoidance and under-assessment of income-tax and wealth-tax in the lottery business has occurred due to various loop-holes and deficiencies in the existing laws and procedures. Audit scrutiny has revealed that while a number of stockists, promoters and sub-agents had not filed the tax returns, quite a few others had not returned the full incomes received by way of bonus, commission and service charged. For instance, the Committee find that in three cases of sole selling agents of West Bengal, there was under-assessment of income of Rs. 2,71,31,100 for the assessment years 1985-86 and 1986-87 leading to

aggregate short levy of tax of Rs. 67,54,481. Similarly, the audit paragraph has highlighted three more cases involving under assessment of Rs. 4,70,764, Rs. 5,27,644 and Rs. 3,36,471 (for the two assessment years) and Rs. 1,76,330. In yet another case of Tamil Nadu there was short computation of income of Rs. 10 lakhs and short levy of tax of Rs. 6.52 lakhs. The Committee note with deep concern these instances of suppression and short-levy of tax. According to the Department, the stepping up of searches, surveys and prosecutions is expected to create the required degree of deterrence against tax evasion. Further, whereas the Income-tax Act provided for the deduction at source from winnings from lottery, no such provision earlier existed for substantial sums paid as bonus, commission and service charges etc. to the stockists, promoters and sub-agents. The Committee note that in pursuance of the suggestion made by them during evidence of the representatives of the Ministry of Finance on the subject, the Govt. have through the Finance (No. 2) Act, 1991 inserted a new section 194G in the Income-tax Act. According to the new provision, any person who is responsible for paying, on or after the 1st day of October, 1991 to any person, who is or has been stocking, distributing, purchasing or selling lottery tickets any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding one thousand rupee shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent. The Committee hope that the Government will keep a close watch over the implementation of this provision and take further necessary steps to overcome the problem of large scale avoidance and under-assessment of tax in the lottery business.

[Para No. 84 of the 8th Report of PAC (1991-92). — 10th Lok Sabha]

Action Taken by the Government

The essence of the recommendation of the Committee is that further necessary steps to overcome the problem of large scale avoidance and under-assessment of tax in the lottery business should be taken. In this connection, detailed instructions have been issued in April, 1990, directing collection and dissemination to the Assessing Officers of information regarding payment of service charges, bonus, royalty, selling agents' commission, names and addresses of persons liable to deduct tax at source. Recipients of prize money of Rs. 1 lakh or more etc. Further, in view of the section 115BB introduced with effect from 1.4.87, the question of loss of revenue will not arise because the rate of tax deduction at source and the rate of tax chargeable on prize winnings are the same, viz. 40%. As already stated, in respect of payments of commission etc. both information regarding such payments and also liability to deduct tax at source have been instructed to be collected and disseminated to the Assessing Officers.



The provisions of section 194G have been incorporated in the Board's annual circulars pertaining to TDS from winning from lotteries and cross-world puzzles. These circulars are widely circulated, *'inter-alia'*, to the field formations of CBDT, State/Union Territory Governments, and Chambers of Commerce and Industry for follow-up action. As regards the Committee's suggestion that the Government should keep a close watch over the implementation of this provision, the suggestion has been noted for appropriate action.

F.No. 228/3/92-ITA-II

F.No. 385/20/92-IT(B)

F. No. 241/1/92—A&PAC. II

Recommendation of the Committee

The Committee are of the view that centralisation of lottery cases is the most practical solution for possible coordination and detection of any suppression of income. Unfortunately, the Department have not so far taken any steps towards this end. The Committee during evidence were informed by the Chairman, Central Board of Direct Taxes that it was difficult to bring all the cases at one place and assess them in one circle as the promoter of the lottery may be in one State and the agent may be in another State. Moreover, the distribution is done all over the country by different agents, sub-agents and lotteries hawkers. But he assured the Committee that Department would centralise the big cases involving larger amounts. The Committee would like to know the concrete action taken in this regard within a period of six months.

[Para No. 89 of the 8th Report of PAC (1991-92) — 10th Lok Sabha]

Action Taken by the Government

The Chief Commissioners of Income-tax have been requested to centralise all big cases of lottery business with one officer for the purpose of coordinate investigation.

F.No. 181/2/92-ITA-I

F.No. 241/1/92-A & PAC.II

Recommendation of the Committee

The facts narrated above abundantly prove that tax collection from the lottery business which is a potential source for raising revenue has hitherto remained largely neglected. Consequently, wilful and planned attempts were on the increase to avoid payment of tax by adopting questionable means. There is no coordination between the Ministries of Finance and Home Affairs in regard to assessment of lottery cases. The State Governments are not seriously following the guidelines issued by the

Ministry of Home Affairs. There have been large scale omissions to bring the recipients of winning tickets to the tax net and there is large scale avoidance/under assessment of the taxes. Further, exemptions from payment of tax granted to the Social Welfare Societies/organisations are not regularly reviewed. The Committee are convinced that there is considerable scope for unearthing unaccounted income in the lottery business. The Committee need hardly emphasise the fact that the growth of the economy and entire gamut of financial administration and fiscal policies of the Government are entirely dependent on the smooth and unhindered flow of revenue. This would be possible only if the menace of tax-avoidance, under assessment and short-levy of tax is effectively met.

The Committee, therefore, recommend that all the preventive and effective steps should be taken immediately in the light of the various recommendations of the Committee contained in this report.

[Para No. 97 of the 8th Report of PAC (1991-92) — 10th Lok Sabha]

Action Taken by the Government

The recommendation of the Committee has been noted for appropriate action.

F.No. 411/2/92-IT(Inv.I)

F.No. 241/1/92-A&PAC.II

CHAPTER III

OBSERVATIONS/RECOMMENDATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM GOVERNMENT

Recommendation of the Committee

Lotteries organised by the Government of India or the Government of a State appear in the Union List in the VII Schedule to the Constitution of India and the Parliament is vested with the powers to make laws governing such lotteries. Lotteries organised by any other agency come under the general entry "Betting and Gambling" in the State List, and would be subject to regulation by Acts enacted by the respective States. The Committee note that there is no separate provision of law governing the assessment of lottery business. Therefore, income from lottery business is computed in the same manner as the income from most other business, under sections 28 to 44 of the Income-tax Act, 1961. Further no specific instructions and circulars have been issued by the Central Board of Direct Taxes on the assessment of lotteries.

[Para No. 79 of the 8th Report of PAC (1991-92) — 10th Lok Sabha]

Action Taken by the Government

There are generally four classes of assesseees connected with lotteries and lottery business. They are:

- (a) Organisers of lotteries on behalf of the State Governments either paying royalty or acting as sole selling agents on commission basis;
- (b) Private promoters of lotteries authorised to conduct lottery by the State Governments;
- (c) Stockists, agents and sub-agents who received commission, bonus, service charges, etc. from the organisers; and
- (d) Winners of prizes in the lotteries.

2. Under the Income-tax Act, 1961, income from business has to be computed in accordance with the provisions of Chapter IV, Part D which are quite comprehensive and can be applied to all types of business. No special provisions are, therefore, considered necessary in respect of categories of assesseees mentioned at (d) and (c) of the preceding para, especially because the organising of lotteries is supervised by the State Governments and are governed by detailed contracts between the organisers and the State Governments.

3. In respect of other categories of assesseees, detailed instructions have been issued on 9.4.90 directing *inter-alia* that:

- (i) Central Information Branches of the Income-tax Department should collect information regarding the payment of royalty, commission, bonus, service charges etc. and furnish the same to the assessing officers to ensure that the income earned by such persons is brought to tax;
- (ii) information should also be collected on liability to deduct tax at source; and
- (iii) the information regarding lottery winners of Rs. 1 lakh or more should be collected and furnished to the assessing officers of such winners.

A copy of Instruction No. 1845 dated 9.4.90 is enclosed.

4. Further, a new Section 115 BB has been inserted w.e.f. 1.4.87 by the Finance Act, 1986, providing for flat rate of tax at 40% on income by way of winnings from lotteries.

F.No. 228/3/92-ITA-II

F.No. 241/1/92-A&PAC.II

FOR DEPARTMENTAL USE

NOT TO BE PUBLISHED

INSTRUCTION NO. 1845

F. No. 411/190-IT(Inv.I)
Government of India
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
Central Board of Direct Taxes

New Delhi, the 9th April, 1990

To

All Directors General of Income-tax
and

All Chief Commissioners of Income-tax

Sir,

SUBJECT: *Collection of information relating to lottery business by the Central Information Branches — regarding.*

The Comptroller and Auditor General of India has conducted a review of the assessment of lottery business and it has been observed that the persons directly involved in this business, such as organisers, stockists and sub-agents, receive substantial amounts as service charged, bonus, royalty and selling agents, commission. It has also been observed that the scheme of lottery generally provides for deduction towards bonus, selling agents commission etc. in respect of prize winning amounts and the amounts so deducted are paid to the concerned stockists/sub-agents. Some of these persons have not been disclosing these amounts in their returns of income. The State Governments have complete data in respect of these persons, which is not being utilized by the Income-tax Department for the purpose of bringing such persons on its records.

2. In the C&AG's review, it has also been observed that the quarterly statements of tax deducted at source being filed with the assessing officers contained the names of the prize winners. Despite this information being available with the Income tax Department, a large number of prize winners are not borne on the registers of the Income-tax Department. Even such persons who have filed their Income-tax returns have not filed their corresponding wealth-tax returns.

3. Some of the State Governments conduct lotteries departmentally and some through private agencies, who either pay royalty to the State Governments or act as sole selling agents on commission basis. The promoters of private lotteries have also been found to engage organising agents to conduct the lotteries on guaranteed profit basis or appoint

stockists and agents on payment of commission for arranging the sales of lottery tickets.

4. The present provisions of Sec. 194B and Section 206 on the Income-tax Act, read with Rules 36A and 37 of the Income-tax Rules lay down that every person responsible for paying to any person income by way of winning form lotteries in an amount exceeding Rs. 5000 is to deduct Income-tax therefrom at the rates specified in the Finance Act of the relevant year. The person deducting tax at source u/s 194B shall file an annual return in Form No. 26B to the designated Income-tax officer, or, if there is no designated Income-tax officer, to the Income-tax officer within whose area of jurisdiction the office of the person responsible for deducting tax is situated, by the 31st May following the financial year in which tax was deducted.

5. In view of the findings of the C&AG, following steps should be taken:—

(i) Central Information Branches should collect information regarding the payment of service charges, bonus, royalty, selling agents commission and service charges on prize winning tickets made to organisers, stockists and sub-agents by the State Governments or by the private promoters of lottery authorised to conduct lottery by the State Governments. The information collected should be verified and disseminated to the concerned assessing officers to ensure that the income earned by such persons is brought to tax. The collection of information from the above sources may be done on a regular basis, as this is likely to lead to detection of considerable tax evasion.

(ii) While collecting information specified in (i) above, Central Information Branches should also obtain names and addresses of persons liable to deduct tax at source from winnings from lotteries. This information should be sent to the designated officers and if there is no designated officer, to the concerned assessing officers.

(iii) The designated officers/assessing officers should then ensure that the annual returns in Form No. 26B are filed by all such persons liable to deduct tax u/s 194B. For this purpose, provisions of Section 272(2)(c) may be used.

(iv) Central Information Branches should collect information relating to recipients of prize money from the annual statements in Form No. 26B from the concerned officers, verify the same and then disseminate it to concerned assessing officers of the winners of lottery so as to enable them to take further action under the Wealth-tax Act. In view of the provisions of Sec. 115BB, the question of loss of revenue under the Income-tax Act

may not arise if tax has been correctly deducted from the lottery winnings because the rates for tax deduction at source at present are the same as laid down in Sec. 115BB. Information in respect of recipients of lottery prize may be collected in respect of prize money of Rs. 1,00,000 and above. Information from this source should be collected every year.

Yours faithfully.

Sd/-

(VINITA CHOPRA)

Director (Inv.)

F. No. 411/190-IT(Inv.I)

Department of Revenue

MINISTRY OF FINANCE

Central Board of Direct Taxes

Dated 9th April, 1990

Copy to:—

- (1) All Officers in the Central Board of Direct Taxes
- (2) Director of Income-tax (RSP&PR)
- (3) Dr. V. K. Agarwal, Joint Secretary, Ministry of Law & Justice, Deptt. of Legal Affairs, New Delhi.
- (4) C&AG, New Delhi.
- (5) Shri Prem Verma, Director (PAC). (This refers F.No. 236/1/Revenue/89—A&PAC—II)

Sd/-

(MADHU MAHAJAN)

Under Secretary

Central Board of Direct Taxes

Recommendation of the Committee

The Audit Paragraph Reveal yet another source of Avoidance of Tax in the Lottery Business. It is seen that in three cases in Madhya Pradesh, prizes worth Rs. 20,39,70,500 were declared on unsold tickets and Government deprived of a sum of Rs. 5,38,83,350 as otherwise recoverable. According to the Department of Revenue the liability to deduct tax at source arises only at the time of actual

payment of the lottery prize under Section 194B of the Income-tax Act and mere declaration of prize is not sufficient to attract the provision of Section. The Committee recommend that the question of leakage of revenue on this account should be examined in consultation with the Ministry of Law and corrective action taken within a period of six months.

[Para No. 85 of the 8th Report of PAC (1991-92) — 10th Lok Sabha]

Action Taken by the Government

The Committee's recommendation has been noted. Necessary action, as suggested, is being taken.

F.No. 385/2092—IT(B)

F.No. 241/92—A&PAC. II

Recommendation of the Committee

Yet another serious problem brought out in the audit paragraph is about the purchase of prize winning tickets at a premium, by the third parties from the actual winners resulting in conversion of black money into white money. The Committee take a serious note of the adverse effects of such cases on the economy of the country. What is really distressing is the fact that there is, at present, no safeguard in the scheme of lotteries to prevent a third person, other than the real buyer, from claiming the prize money. The Committee are further distressed to find that there is also enough scope for splitting the prize money by putting forth joint claims so as to avoid on reduce the tax liability especially the Wealth-tax liability. The Committee strongly recommended that both these problems, should be seriously considered for evolving suitable methodology to check avoidance of tax through such means.

[Para No. 87 of the 8th Report of PAC (1991-92)—10th Lok Sabha]

Action Taken by the Government

The possibility of converting black money into white money by either purchasing the prize winning tickets or for splitting the prize money to permit joint claimants with reduced tax liability will be checked under the provisions of tax deduction at source under section 194 G. This provision for deducting tax at source will help bringing the investor to the notice of the department and act as a check on the evils referred to by the PAC.

The Investigation Wings and the Central Information Branches of the Income-tax Department do collect information regarding these malpractices. The Matter is also, investigated by the assessing officers in suspected cases. Therefore, whenever information is received that an

assessee has concealed income for lottery business or the prize winnings from the lotteries or has purchased winning ticket at a premium or has attempted to split the prize money, appropriate action is taken by way of survey search, other investigations or deep scrutiny in the assessment proceedings.

F.No. 411/2/92—II(Inv.I)

F.No. 154/3/92—TPL

F.No. 241/1/92—A&PAC. II

Recommendation of the Committee

It is further distressing to find that even the basic requirements provided for under the Income-tax Act such as compulsory maintenance of accounts by major assesseees and tax audit, the payments, in excess of Rs. 2500, by crossed cheque/demand draft were not insisted upon in a number of cases. The Committee urge upon the Department of Revenue to ensure that prescribed procedure in all such matters is strictly adhered to.

[Para No. 88 of the 8th Report of PAC (1991-92)—10th Lok Sabha]

Action Taken by the Government

In respect of para 5(viii) of the C&AG Report on Review of Assessment of Lottery Business it was stated that while making a summary assessment under section 143(1) of the Income-tax Act, the assessing officer can make only adjustments prescribed under the Act. Whenever assessments were completed u/s 143(1), the Assessing Officer was not required to look in to either the details or the correctness of the expenses. However, when the cases were picked up for scrutiny u/s 143(3) of the Act, detailed investigations were made to verify the expenses etc. including compliance with the provisions of section 40A (3) requiring the payments in excess of the specified limits of crossed cheques/drafts.

F.No. 228/3/92—ITA-II

F.No. 241/1/92—A&PAC. II

Recommendation of the Committee

Where as Lottery Act/Rules provide a time limit for claiming of prizes in respect of prize winning tickets, no such time limit has been prescribed with regard to payment of the prizes. Audit para has brought out a case where only part of prize was paid (Rs. 1 lakh out of Rs. 15 lakhs) and the balance remained undisbursed without any deduction of tax at source. With a view to check malpractices, the Committee recommend that the

question of fixing a time limit for payment of prizes in respect of prize winning tickets should be urgently examined and compliance reported within a period of six months.

[Para No. 91 of the 8th Report of PAC (1991-92)—10th Lok Sabha]

Action Taken by the Government

The issue raised in the para has been examined while examining the para 2.01 of the C&AG's Report 1988-89. The matter was also discussed with the Ministry of Home Affairs. The suggestion was made to the Ministry of Home Affairs to consider the feasibility of fixing a time limit for payment of prizes in respect of prize winning tickets. The Ministry in their letter No. V-210011/8/90—GPA. IV dated 1.4.91 (copy placed below) addressed to Chief Secretaries of all State Government/Union Territory Administrations, on the subject of time limit for payment of prize money on winning lottery tickets, have suggested that a time limit may be prescribed for payment of prize money on prize winning tickets. It has been stated in the said letter that as a time prescribed for claiming the prize on the prize winning tickets. Varies from 1 to 3 months from the date of draw of various lotteries, the State Governments, etc. are requested to consider making payment of prizes in case of State Lotteries within one month after the date of closure for receiving the claim on the winning tickets. It has further been suggested that this fact may be kept in view while giving permission to private lottery as well.

F.No. 154/3/92—TPL

F.No. 241/1/92—A&PAC. II

No V—21011/8/90—GP&IV

Government of India/Bharat Sarkar

MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA NEW
DELHI

To

The Chief Secretaries
All State Government/Union Territory Administrations

SUB:—*Time limit for payment of prize money on winning lottery tickets.*

Sir,

I am directed to invite your attention to this Ministry's letter No.V—21011/7/83—GPA—IV dated 27.6.84 wherein guidelines for the conduct of State Lotteries were prescribed and were required to be kept in view while granting permission to organisations to conduct private lotteries.

2. The Comptroller & Audit General of India in his Report for the year ending 31.3.89 has pointed out that sometimes only a part-payment of the total prize money is made to the individual and the balance remains

undisbursed without deduction of tax at source. In order to check this malpractice, it is suggested that a time limit may be prescribed for payment of prize money on prize winning tickets. As the time prescribed for claiming the prize on the prize winning tickets varies from one to three months from the date of draw of various lotteries, you are requested to consider making payment of prizes in case of state lotteries within one month after the date of closure for receiving the claim on the winning tickets. This fact may be kept in view while giving permission to private lotteries as well.

Yours faithfully,

Sd/-

(PADMINI DESIKACHAR)

Deputy Secy. to the Govt. of India

No.V—21011/8/90—GPA. IV

Copy to:—

1. Secretaries, Department of Finance, All State Govts./UT Administrations.
2. Director of lotteries, All State Govts./UT Administrations.

Copy also to:—

3. Secretaries, All Ministries and Department of the Government of India.

Sd/-

(PADMINI DESIKACHAR)

Deputy Secy. to the Govt. of India

Recommendation of the Committee

According to audit, in certain cases where the social welfare societies/organisations were granted exemptions from payment of tax having regard to the object of such institutions either the exemption were initially irregular due to non-fulfilment of necessary conditions by such organisations or these organisations become disentitled to the exemptions due to contravening of some legal provisions subsequently as detailed in para 65. In reply to a specific question whether there was any review of all cases of exemptions granted to such organisations, the Deptt. of Revenue admitted that there was no such review. After the issue of exemption notifications in such cases, the Department do not keep any watch over the activities of such organisations unless there are some specific allegations. The Committee recommended that the Government should evolve a suitable methodology for keeping a continuous watch on the activities of the societies/organisations granted exemption from tax and if such

societies commit any contravention of legal provisions necessitating a review of the question of grant of exemption to them that should be done immediately.

[Para No. 92 of the 8th Report of PAC (1991-92) — 10th Lok Sabha]

Action taken by the Government

The notified trusts/institutions are not required by the existing law to file their returns of income for the years for which they have been granted exemption. However, at the time of renewal of the notification, audited accounts for earlier years are examined in order to satisfy that the income of the trust/institution has been applied/accumulated for charitable, religious objects of the institution. On such an examination or on receipt of independent information, if it is established that the notification was obtained fraudulently, the Central Government has power to withdraw the notification with retrospective effect.

It may be pointed out that with effect from 1.4.90 the exemption granted u/s 10(23C) will not apply to any income of a trust/institution being profits or gains of business unless such business is incidental to the attainment of its objects.

F.No. 181/2/92—ITA—I

F.No. 241/1/92—A&PAC. II

Recommendation of the Committee

According to Audit in cases where the promoter of lottery appoints as agent for the purpose of conducting the draws on payment of stipulated amount there is an Association to join voluntarily and without any compulsion and that for tax purposes such an association comprising the promoter and the organising agent can be assessed as a 'Association of Persons'. The Department have, however, not accepted the audit's view-point and in support of their contention the Department have adduced various legal decisions. The Committee recommend that the matter should be examined in detail in consultation with the Ministry of Law, urgently.

[Para No. 96 of the 8th Report of PAC (1991-92) — 10th Lok Sabha]

Action Taken by the Government

As desired by the Committee the matter has been referred to the Ministry of Law for their opinion in the matter.

F.No. 181/2/92—ITA—I

F.No. 241/1/92—A&PAC-II

Recommendation of the Committee

According to Audit, in cases where the promoter of lottery appoints an agent for the purpose of conducting the draws on payment of stipulated amount, there is an Association to join voluntarily and without any compulsion and that for tax purposes such an association comprising the promoter and the organising agent can be assessed as an 'Association of Persons'. The Department have however, not accepted the audit's view-point and in support of thier contention the Department have adduced various legal decisions. The Committee recommend that the matter should be examined in detail in consultation with the Ministry of Law, urgently.

[Para No. 96 of the 8th Report of PAC (1991-92) — 10th Lok Sabha]

Action Taken by the Government

Kind attention or the honb'le Committee is drawn to the O.M.F.No.241/1/92—A&PAC. II dated 28.12.1992 enclosing the Action Taken Notes on the recommendation contained in Para 96. It was stated therein that the matter has been referred to the Ministry of Law for their opinion in the matter as desired by the Committee.

A Copy of the referral note was sent to C&AG for their comments. The C&AG have, *vide* their letter dated 12.1.1995, stated that considering the ratio of Kerala High Court's decision reported in 184—ITR—248 and earlier decision on the subject, they do not propose to pursue the matter any further.

F.No.241/2/94—A&PAC. II

CHAPTER IV

OBSERVATIONS/RECOMMENDATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation of the Committee

The Committee regret to note that most of the State Govts. are not seriously following the guidelines issued by the Ministry of Home Affairs in 1984 and subsequently in regard to conduct of State lotteries and lotteries permitted by the State Govt./Union Territory Administration. Further, according to the Ministry of Home Affairs so far as the schemes of different State Government regarding lotteries are concerned the rules differ from State to State. Further, the rules regulating the conduct of lottery did not provide for the State Government being informed of the details of the persons engaged for running the lotteries by the organising agents/sole selling agents. According to the Department of Revenue it would be useful if the rules regarding the conduct of lotteries were such that the State Govts. could ask for such details from the organisers of lotteries. The Department of Revenue have already taken up this matter with the Ministry of Home Affairs. The Committee urge upon the Ministries of Home Affairs and Finance to take the desired corrective action in the matter at the earliest.

The Committee also recommend that to achieve uniformity, effective control and avoiding malpractices in Lotteries organised by the various State Government/Union Territory Administration Government should consider the question of bringing in a suitable legislation.

[Para No. 82 of the 8th Report of PAC (1991-92) -10th Lok Sabha]

Action Taken by the Government

It is the Ministry of Home Affairs which frames guidelines and regulates conduct of Lottery Business. According to the Home Ministry, the State Governments has been reminded, from time to time, of the various guidelines issued by the Ministry on the conduct of lotteries. As regards framing of rules that would enable the State Government to ask for details of the persons engaged for running the lotteries by the organising agents/sole selling agents, the desirability of such a step is once again being impressed on the States.

In this connection, the Home Ministry has already written to the State Governments/UTs vide letter No. V-21011/8/90-GPA-IV dated 17.1.91. They are being reminded on the issue. Private lotteries are covered under Entry 34 of the State List in the Seventh Schedule to the Constitution. The

State Governments can enact legislation and frame rules applicable within their States in respect of private lotteries.

Lotteries organised by Govt. of India, State Govts. and UT Administrations are covered under Entry 40 of the Union List in the Seventh Schedule to the Constitution of India. However, there is no proposal at present to bring in any Central Legislation.

The Home Ministry has also issued instructions to the State Govts./UTs vide letter No.V-21011/9/90-GPA-IV dated 23.7.92. (copy enclosed).

Under the Income-tax Act 1961, the provisions of section 194-g inserted through the Finance Act, 1991 (No. 2) will help in obtaining the information regarding organising agents/sole selling agents engaged in the lottery business. As per the provisions of this section, any persons who is responsible for paying to any person who is or has been stocking/distributing/or selling lottery tickets, any income by way of commission, remuneration or prize (by whatever name called) on such tickets in an amount exceeding Rs. 1000 shall, at the time of credit of such income to the account of the payee deduct income-tax thereon at the rate of 10%. The provisions of deduction of tax at source, in this regard, will certainly help in enlarging the information base for Income-tax Department.

F.No. 411/2/92-II(Inv.I)

F.No. V-21011/8/90-GPA-IV

F.No. 154/3/92-TPL

F.No. 241/1/92-A&PAC. II

No V-21011/8/90-GPAIV

Government of India/Bharat Sarkar

MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA

New Delhi

23 July, 1992

To

The Chief Secretaries,
All State Government/
Union Territory Administrations

SUBJECT:—*Regarding details of persons engaged in the lottery business*
Sir,

I am directed to invite your attention to this Ministry's letter No.V-21011/7/83-GPA-IV dated 27.6.84 wherein guidelines for the conduct of State Lotteries were prescribed and were required to be kept in view while granting permission to organisations to conduct private loteries.

2. The Public Accounts Committee in their Eighth Report for the year 1991-92 have pointed out that most of the State Governments are not

seriously following the guidelines issued by the Ministry of Home Affairs in 1984 and there after in regard to conduct of State lotteries and lotteries permitted by the State Governments/Union Territory Administrations. Further, the rules regulating the conduct of lottery did not provide for the State Government being informed of the details of the persons engaged for running the lotteries by the organising agents/sole selling agents.

3. In view of this it is once again requested that guidelines issued by this Ministry in 1984 and there after may be strictly followed. Further rules be framed so that necessary details of the persons engaged for running of lottery by the organising agents/sole selling agents are made available to the State/UT Governments whenever called for the position in this regard may please be intimated at the earliest. In this connection our letter of even number dated 17.1.91. may kindly be referred to.

Yours faithfully,

Sd/-

(R.K. MISHRA)

Director (P&CD)

No.

New Delhi, Dated 23 July, 1992

Copy to:—

1. Secretaries, Department of Finance, All State Govts./Union Territory Administrations.
2. Director of lottaries, All State Govts./Union Territory Administrations.
3. Secretaries, All Ministries and Departments of the Government of India.

(R.K. MISHRA)

Director (P&CD)

Recommendation of the Committee

The Committee find that a registered firm had not returned agents' commission and sole selling agents' commission aggregating Rs.2.70 crores in two assessment years 1985-86 and 1986-87. The assessment for year 1986-87 had also been finalised as summary assessment. The Department have accepted the objection for assessment year 1985-86. For the assessment year 1986-87, where the under assessment involved was as high as Rs. 1.87 crores, the Department have stated that the assessment has been done under Summary assessment scheme and enquiry and remedial measures would involve the conversion of the summer assessment case into

scrutiny case which is against the policy of the Government as the audit point is not covered by the prescribed adjustments. Further, according to the Department, if the assessments completed under the Summary Assessment Scheme are allowed to be disturbed in a routine manner, the whole idea underlying the schemes, would be negated. The Committee are unable to agree with the views of the Department and are convinced that the summary assessment scheme should not prevent them from reopening of the cases and taking proper action in important cases where a large revenue is at stake. The Committee recommend that in the interest of revenue and also with a view to instil fear in the minds of the tax evaders the Government should consider the question of reopening of the assessments on the basis of subsequent positive information, in such cases where there is reported under-assessment/short-levy of tax involving heavy amount. The Committee would like to know the concrete action taken in this regard within a period of six months.

[Para No. 95 of 8th Report of the PAC (1991-92)—10th Lok Sabha]

Action Taken by the Government

During the course of oral evidence of the Department held on 23.10.90 on Para 2.01 of the Report of the C&AG for the year ending 1989-90 relating to assessment of lottery business similar issues were raised in Point No. 23 arising out of that evidence. In respect of Point No. 23, it was stated that the Department had introduced the scheme of summary assessment in order to speed up the disposal of the Income-tax assessments with the manpower available and reduce the every increasing workload. If the assessments completed under the summary assessment scheme are allowed to be disturbed in a routine manner the whole idea underlying the scheme, namely, the expeditious disposal of assessment to reduce the increasing workload will be negated. Besides, this procedure would provide the officers with more time which would lead to better assessment of other cases where large revenue is involved. Hence the decision not to insist on the withdraw of administrative instruction in this regard was taken with the approval of the then Finance Minister.

Instructions have also been issued to the field formations on 14th January, 1992 to retrieve the revenue in cases where mistakes have been detected by Audit and reported in their Audit Report for 1989-90 and 1990-91.

F.No. 228/3/92-ITA II

F.No. 241/1/92-A&PAC I

F.No. 241/1/92-A&PAC II

CHAPTER V

RECOMMENDATIONS AND OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES

Recommendation of the Committee

Prior to April 1, 1972, casual and non-recurring receipts were not regarded as income under the Income-tax Act, 1961, as such no income-tax was chargeable on receipts from winnings of lotteries. The Act was amended in 1972 on the recommendations of the Direct Taxes Enquiry Committee (Wanchoo Committee) by rendering income from lotteries assessable to tax under the head 'Income from other sources'. Further, with effect from 1st April 1987 (Assessment year 1987-88) winnings from lotteries is taxed at the rate of 40 percent subject to a flat deduction of Rs. 5,000/- (for the aggregate/casual receipts), without any further allowance or deduction. The total collection from tax deducted at source under section 194B of the Income-tax Act, 1961, from winnings from lottery or cross-word puzzles for 1987-88 and 1988-89 has been Rs.44.88 crores and Rs. 36.99 crores, respectively. The Committee are surprised to find that the Central Board of Direct Taxes have so far not initiated any exercise to assess the profits in this trade, even decades after the operation of the schemes in the States. The Committee feel that such an assessment is very essential both for the purpose of framing realistic estimates of tax collection and taking adequate preventive steps to curb leakage of revenue.

[Para No. 80 of the 8th Report of the PAC (1991-92) 10th Lok Sabha].

Action Taken by the Government

The Committee has desired that the CBDT should assess the profits in the lottery business for the purposes of framing realistic estimates of tax collection and taking adequate preventive steps to curb leakage of revenue. The National Institute of Public Finance and Policy has been requested to conduct such a study. The terms of reference are as follows:

"To identify factors which are important in determining the true income of persons engaged in lottery business."

Their Report is awaited.

F.No. 181/2/91-ITA-I

F.No.241/1/92-A&PAC. II

Recommendation of the Committee

The Committee are distressed to find that till recently no steps were taken by the Department of Revenue/Central Board of Direct Taxes to arrest large scale avoidance, under-assessment and short-levy of tax in the lottery business resulting in substantial loss to the national exchequer. The Revenue Secretary conceded before the Committee during evidence that the income from lotteries has not received the kind of specialised attention that it deserved. The Department of Revenue have admitted the pitfalls in the pre-assessment procedure and the procedure is stated to have been streamlined from September 1989. The Committee deplore the laxity and complacency of the Department in an important area like the collection of tax. The Committee recommend that the effectiveness of the existing procedure should be evaluated with a view to further revamping it.

[Para No. 81 of the 8th Report of PAC (1991-92)—10th Lok Sabha]

Action Taken by the Government

The Income-tax Department through Central Information Branches working under Directors of Income-tax (Inv.) has started collecting information on regular basis from the State Governments with regard to the receipt of service charges/bonus/commission etc. by organisers, stockists, agents, etc. and about the prize winners of lotteries for ensuring that the income/wealth of such persons is correctly brought to tax. These steps have substantially been improved to effectiveness of the present procedure of assessments. On receipt of the study report from the National Institute of Public Finance and Policy (as mentioned in a reply to para 80) suitable guidelines will be issued to the field officers in order to assess the correct income of the persons engaged in lottery business.

F.No. 181/2/92-ITA-I

F.No. 241/1/92-A&PAC.II.

Recommendation of the Committee

The audit paragraph reveals yet another lacuna leading to under-assessment or avoidance of tax in the matter relating to the expenses claimed by the persons engaged in the lottery business. The Committee are surprised to find that the expenses claimed and allowed not only varied from assessee to assessee but there was also no relationship whatsoever of

these expenses with the turnover. Even in cases with high turnover, running into crores of rupees, the accounts were replete with claims for disproportionately high expenses, which reduced the profit margin for assessment purposes to a very low level. What is more distressing is the fact that there has not been detailed examination of the accounts of the assesseees by the assessing officers so as to bring the actual income to tax. The Committee are deeply concerned over this dismal state of affairs. The Revenue Secretary assured the Committee during evidence that the matter was proposed to be got examined by an expert body for evolving concrete guidelines to overcome this lacuna. The Committee emphasise that the proposed study should be got conducted urgently and the guidelines evolved as a result thereof should be introduced within a period of six months.

[Para No. 86 of the 8th Report of PAC (1991-92)—10th Lok Sabha]

Action Taken by the Government

During the course of oral evidence, before the P.A.C. the Ministry had given an assurance that the study will be undertaken by an Expert Body to enable the Central Board of Direct Taxes to issue broad guidelines to the Assessing Officers for properly examining the accounts of such persons engaged in the lottery business and for determining the normal gross profit ratio in lottery business.

In compliance with the assurance given to the Committee, the CBDT wrote a letter to Dr. Amaresh Bagchi, Director, National Institute of Public Finance and Policy, New Delhi, vide D.O.F. No. 228/1/90-ITA-II dated 19.9.90, requesting the Institute to take up the matter and conduct the said study. From time to time the Institute has been reminded for submission of the study report. The NIPFP has again been requested to conduct the study on Assessment of Lottery Business and has been requested to submit its report at the earliest.

F.No. 228/3/92-ITA-II

F.No. 241/1/92-A&PAC. II

Recommendation of the Committee

The Committee find that in contravention of the standing instructions of the Central Board of Direct Taxes that source deduction of income-tax should be made with reference to the aggregate amount of cash prize and value of prize in kind, in the 16 cases relating to the Director of State Lotteries in Kerala, income representing the value of cars had escaped assessment, the approximate revenue effect being of the order of Rs. 6,10,000. While accepting the point, the Department of Revenue have

stated that necessary steps are being taken to raise the necessary demand and the question of amendment* of Form 26B to clarify that the value of the prize given in kind should be indicated is under consideration.

[Para No. 90 of the 8th Report of PAC (1991-92)—10th Lok Sabha]

Action Taken by the Government

Form No. 26B in respect of the annual return of TDS from winnings from lotteries or cross-word puzzles has since been amended by the Income-tax (First amendment) Rules, 1991 so as to indicate therein the winnings, in cash and in kind, separately, alongwith their total. By this amendment, it will now be possible to ensure that winnings paid in kind do not escape tax deduction at source. In regard to the 16 cases relating to the Director of State Lotteries, Kerala, referred in this paragraph, the CCIT, Cochin had earlier informed the Board that necessary action had been initiated to raise and collect the demand from the concerned assesses directly. Final Report from the CCIT is awaited.

F.No.385/20/92-II (B)

F.No.241/1/92-A&PAC.II

Recommendation of the Committee

The Committee note that Churahat Children's Welfare Society, Rewa, M.P. was granted exemption from payment of Income tax under Section 10(23C) (iv) of the Income tax Act for the years 1984-85 to 1988-89. The Society was granted a licence by the M.P. Govt. to conduct lottery draws. In a suit filed in the High Court, M.P., the High Court had *inter alia* held that due to the contravention of the provisions of the State Lottery act by the Society, it was disentitled to get exemption from payment of lottery tax. According to the Department of Revenue the judgement of the Madhya Pradesh High Court has not been accepted by the Society and the Supreme Court, *vide* order passed on 4.5.1989 in special leave to appeal has admitted the Society's special leave petition, against the judgement of the High Court, for hearing. The Committee have been informed that as a matter of abundant precautions, the Department have issued notices to the Society on 27.8.1990 requesting it to show cause why the two notifications issued on 31st August, 1984 and 25th March, 1986 under Section 10(23C) (iv) of the Income-tax Act granting exemption to the Society for the assessment years 1984-85, 1985-86 and 1986-87 to 1988-89 respectively should not be withdrawn with retrospective effect. The Committee have been further informed that on 27.9.1980 the Society had sought for adjournment. Again through a telegram received in the Ministry

*This Amendment has been carried out w.e.f. 7.1.1991.

on 23.5.91, adjournment was sought for by the Society for the assessment years 1984-85 and 1985-86. No reply is stated to have been received for assessment years 1986-87 to 1988-89 despite the reminders issued on 24.6.1991, 16.6.91 and 18.11.91. According to the Ministry as the evidence of service of reminders dated 16.9.91 and 18.11.91 is not available on record, a final opportunity has been given to the Society to reply to the show cause notices. The Committee regret to note that although more than one year has lapsed since the issue of the show cause notices to the Society on 27.8.90, no progress has been made in the matter. The Committee would like it to be expedited and the outcome reported to them.

The Committee are also surprised that no evidence of service of reminders issued to the Society on 16.9.91 and 18.11.91 is available on record with the Ministry. They take serious note of this and desire that the matter may be probed.

[Para No. 93 of the 8th Report of the PAC (1991-92) 10th Lok Sabha.]

Action Taken by the Government

The Society has furnished its reply on 13.1.92 in response to notices issued on 27th August, 1990 for withdrawal of notification u/s 10(23C) (iv) of IT Act for the assessment years 1984-85 to 1988-89. The Society has objected to the withdrawal of the notification on the following grounds:—

- (a) The observations in the show cause notices are merely guided by the M.P. High Court's decision which was delivered in the context of the provisions of the M.P. Lottery Adhiniyam 1973 and not under the Income-tax Act and therefore the findings have no nexus with the grant of exemption under section 10(23C) (iv) of the Income-tax Act.
- (b) The matter is sub-judice as the Supreme Court *vide* its order dated 20.1.89 has admitted the S.L.P. of the Society against the order of the M.P. High Court.
- (c) Sec. 21 of General Clauses Act empowers the Central Govt. to issue or to rescind the notification which can have the effect from the date of publication in the Gazette. This power does not include a power to rescind the notification with retrospective effect. The Society has placed reliance for its contention on the following decisions:
 - (i) Mohd. Swallechin & others Vs. Lt. Governor of Delhi (AIR 1977 Delhi 184).
 - (ii) Dulal Chand Ghosh Vs. Distt. Magistrate Visakhapatnam (AIR 1957 SC 676).

It has been contended that the notification issued on 31st August, 1984

and 25th March, 1986 were operative during the AYs 1984-85 to 1988-89 and they have ceased to operate thereafter on the date of issue of show cause notices. The power to modify rescind cannot be exercised post factor and after the original order has ceased to operate.

(d) M/s. Vishwanathan & Co. auditors appointed by the Commission of Inquiry have commented as follows:

"According to the books and other vouchers, records produced to us, the said income was utilised in establishing and running a hospital and other related expenses. The above payments are supported by vouchers and is found in order."

2. The Ministry of Law in their opinion dated 5th October, 1989 had opined with reference to the approval granted under Section 35(1) (ii) of the Act dealing with the deduction available to scientific research associations that the competent authority can withdraw the notification only from a prospective date and not from a retrospective date "unless a fraud has been committed while obtaining the notification."

3. The Society was granted a licence for conducting Lottery draws on 3rd Jan., 1984 by District Collector, Sidhi. The Society entered into an agreement with M/s. A&A Enterprises on 14th January, 1984 to appoint the latter as organising agents. On 31st August, 1984 when the notification for AY 1984-85 and 1985-86 was issued these facts were not before the Central Govt. however, when the notification U/s 10(23C) was renewed for Assessment Year 1986-87 and 1988-89 on 25.3.86, the Central Govt. was aware of the agreement with M/s. A&A Enterprises, New Delhi. The main thrust of the decision of the MP High Court is that the Society had contravened section 6 of the MP Lottery Adhiniyam 1973 by sharing to profits with the organising agent. It is felt that the approval granted under the sec. 10 (23C) (iv) cannot be withdrawn on the ground that the Society had contravened certain provisions of section 6 of the MP Lottery Adhiniyam 1973. At any rate, it is difficult to hold that there was any fraud committed by the Society while seeking the exemption under section 10(23C) (iv), which is a requirement for withdrawal of the exemption with retrospective effect. However, the matter is under examination in consultation with the Law Ministry. Further the Society has challenged the decision of the MP High Court and the Supreme Court has admitted the S.L.P. filed by the Society. It is also to be noted that the report of the S.T. Ramalingam Commission of Inquiry is awaited.

4. For issue of notification U/s 10(23c) at the Relevant time two conditions were to be satisfied (1) that the institution should be established for charitable purposes and (2) it should have importance through out India or any State or States. These conditions were satisfied when notification for assessment year 1984-85 to 1988-89 were issued.

5. The Committee has desired to probe the matter Relating to evidence of service of reminders issued to Society on 16.9.91 and 18.11.91. It is seen

from the records that the reminders were issued to the Society by the Registered Post without acknowledgement due. The Postal authorities were requested to intimate the date of service of these letters on the society but no reply has been received so far. A subsequent reminder dated 20th December, 1991 was, however, served through Commissioner of Income-tax, Bhopal and the Society has furnished the reply.

F.No. 181/2/92-ITA I

F.No. 241/1/92-A&PAC II

Recommendation of the Committee

The Committee further find that in the case of the Indian Red Cross Society, Bhopal, the Department of Revenue have accepted in principle, the audit objection that tax of Rs. 2,72,528/- was not deducted on the payment of lottery prizes of over Rs. 10,000/- each for further necessary action. Similarly, in the case of Indore Table Tennis Trust, Indore the Department have accepted the audit objection that the trust was liable to deduct tax at source on the prizes amounting to Rs. 6,62,65,000/- disbursed on sold tickets. But for the audit test check, the tax evasion in these cases would have gone undetected. The Committee recommend that with a view to effectively combat different types of tax evasions, the number of survey operations and search and seizure operations should be adequately augmented. The Committee further emphasise that no leniency should be shown to the offenders involved in evasion of revenue, irrespective of quantum of value involved and they should be booked for appropriate action under the law. The Committee would also like to know the conclusive action taken in the aforesaid two cases within a period of six months.

[Para No. 94 of the 8th Report of PAC (1991-92) 10th Lok sabha]

Action taken by the Government

For strengthening the enforcement agencies of IT department 1377 posts in various cadres were created during the year 1986-87 out of which 202 posts were meant for prosecution work only. Subsequently another 2650 posts in different cadres have been sanctioned for this purpose upto March, 1992. This positive step has resulted in the stepping up of survey and search & seizure operations. From April, 1991 to Sept., 1992 search and seizure operations in 8 lottery cases were conducted resulting in seizure of assets worth Rs. 9.52 lakhs. In these cases the assessee disclosed an amount of Rs. 306 lakh under section 132(4) of the I.T. act.

2. In the following cases remedial action was taken as under:—

(a) *Indore Table Tennis Trust, Indore-AY 1986-87:*

In this case orders u/s 201 and 201A were passed on 25.1.90 creating a demand of income-tax amounting to Rs. 1,65,66,250/- and interest amounting to Rs. 99,28,906/-. Against the said orders the assessee preferred an appeal before the Commissioner of Income-tax (A), Bhopal who set aside the order of the Income-tax Officer (TDS) directing him to make a fresh order after completion of necessary enquiries. Aggrieved by the order of the Commissioner of Income-tax (A), the assessee went in second appeal before the Income Tax Appellate Tribunal, Indore Bench, Indore *vide* its order No. ITA/1022/IND/1990 dated 17.2.92 has held that the trust was not the person responsible for deducting the tax at source and accordingly the Tribunal cancelled the orders of both the CIT(A) & the ITO(TDS). Against the order of the ITA, reference application u/s 256(1) of the IT Act, 1961 has been filed on 29.4.92.

The case was also examined for prosecution u/s 276B. Since the ITAT has cancelled the orders passed by ITO (TDS), it is premature to consider launching of prosecution.

The assessment in this case was re-opened u/s 147 of the Act for AY 1986-87. Reassessment proceedings have been stayed by the M.P. High Court, Indore Bench, in response to writ petition filed by the assessee.

(b) *Indian Red Cross Society A.Y. 1985-86:*

In this case the objection was raised for assessment year 1985-86 (financial year 1984-85). The Audit had worked out short levy of Rs. 2,72,528/- on the basis of prizes distributed and the information which was available at the relevant time. After the enquiries were made from the assessee it came to light that some of the prizes were distributed in the financial year 1985-86. Therefore, income-tax demand of Rs. 3,94,185/- u/s 201 and interest u/s 201 (1A) amount to Rs. 3,00,500/- have been levied on 25.1.90 for assessment year 1985-86 and 1986-87. On appeal the Dy. Commissioner of Income-tax (Appeals) *vide* his order dated 4.2.91 has confirmed the orders of the ITO. The assessee has preferred an appeal against the order of the Dy. Commissioner (Appeals) before the ITAT which is pending.

NEW DELHI;
20 March, 1995

BHAGWAN SHANKAR RAWAT,
Chairman,
Public Accounts Committee.

29 Phalgun, 1916 (Saka)

APPENDIX

Sl. No.	Para No.	Ministry	Recommendation/Conclusion
1	2	3	4
1.	3	Finance	The Committee are deeply concerned to note that even after a lapse of three years since presentation of their Report, the Ministry of Finance have failed to furnish the final replies on the recommendations at paragraphs 80, 81, 86, 90, 93 and 94. The Committee deprecate the casual approach on the part of the Ministry in the matter and recommend that the final replies to the recommendations in respect of which only interim replies have so far been furnished should be expeditiously submitted after getting them duly vetted by Audit.
2.	9	-do-	The Committee are surprised to note that even after the expiry of about four and a half years, the Ministry of Finance have not been able to get expedited the study entrusted to the National Institute of Public Finance and Policy for revamping the system for assessment of income from lottery business. The Committee deplore the delay and desire that conclusive action be taken in the matter within a period of three months and reported to them.
3.	12	-do-	In their earlier report, the Committee had pointed out that most of the State Governments were not seriously following the guidelines issued by the Ministry of Home Affairs in 1984 and thereafter in regard to conduct of State lotteries and lotteries permitted by the State Governments/ Union Territory administrations. They had also recommended that in order to achieve uniformity and effective control and to avoid malpractices in lotteries organised by the various State Governments/ Union Territory administrations. Government should consider the question of bringing in a suitable legislation. The Committee

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regret to note from the action taken replies received that no concrete action has thus far been taken by Government on the lines suggested by the Committee. The Ministry of Home Affairs have simply issued another Circular to the States/ Union Territories reiterating their earlier guidelines on the subject. As regards legislation, it has merely been stated that there was no proposal at present to bring in any central legislation without indicating whether the matter was examined afresh in the light of the facts brought out in the Committee's report and if so, the considerations which weighed against accepting the recommendations of the Committee. Evidently, the issue has not been examined with the seriousness that it deserved. Pertinently, during the course of the examination of the subject, the Ministry of Home Affairs had earlier maintained that the policy of the Government of India had always been to discourage lotteries and therefore they had not legislated on this field. The Committee are of the opinion that if the Government hold a considered view against conducting of lotteries they should come out with suitable legislation and/or steps banning lotteries altogether. On the other hand, if it is felt desirable to allow lotteries to be continued on revenue considerations, adequate steps should be taken as suggested by the Committee to make a uniform legislation with a view to exercising effective control and curbing malpractices in lotteries. The Committee, therefore, reiterate their earlier recommendation and would like to be informed of the precise action taken in the matter.

4. 15 Finance

While examining a case wherein an assessee, whose assessment was finalised under the summary assessment scheme for the year 1985-86 and where an under assessment to the tune of Rs. 1.87 crores

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was subsequently detected, the Committee had observed that the Department had not reopened the case since it involved conversion of a case from summary assessment scheme to the scrutiny assessment scheme which according to the Ministry was against the policy of the Government. The Committee had recommended that in the interest of revenue and also with a view to instil fear in the minds of the tax evaders the Government should consider the question of reopening of the assessments on the basis of subsequent positive information in such cases where under assessment/short levy of tax involving heavy amounts were reported. In their action taken note, the Ministry of Finance (Department of Revenue) while reiterating their position with regard to reopening of summary assessment cases, have stated that instructions have also been issued to retrieve the revenue in cases where mistakes have been detected by Audit and reported in the Audit Reports for the subsequent two years. The Committee cannot remain fully satisfied with this. They feel that instead of restricting such retrieval action to the two subsequent Audit Reports only, the CBDT should issue suitable instructions to officers concerned for enabling them to reopen all cases of assessments where under assessments/short levy involving sizeable amounts have been subsequently pointed out by Audit or noticed otherwise, so as to safeguard revenue interests of Government as also to check the tendency to evade taxes.

PART II
MINUTES OF THE TWENTY-SECOND SITTING OF THE
PUBLIC ACCOUNTS COMMITTEE (1994-95)
HELD ON 13 MARCH, 1995

The Committee sat from 1100 to 1130 hrs. (FN) on 13 March, 1995 in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Bhagwan Shankar Rawat—*Chairman*

MEMBERS

2. Sqn. Ldr. Kamal Chaudhry
3. Dr. K.V.R Chowdary
4. Shri Jagat Veer Singh Drona
5. Shrimati Geeta Mukherjee
6. Shri Somappa R. Bommai
7. Shri Triloki Nath Chaturvedi
8. Shri Murasoli Maran

LOK SABHA SECRETARIAT

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|-------------------------------|--------------------------|
| 1. Shri Murari Lal | — <i>Joint Secretary</i> |
| 2. Smt. Paramjeet Kaur Sandhu | — <i>Director</i> |
| 3. Shri P. Sreedharan | — <i>Under Secretary</i> |

**REPRESENTATIVES OF THE OFFICE OF THE COMPTROLLER AND AUDITOR
GENERAL OF INDIA**

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|--------------------------|--|
| 1. Shri Samir Gupta | — <i>Addl. Dy. C&AG (Reports)</i> |
| 2. Shri A.K. Banerjee | — <i>Pr. Director (Direct Taxes)</i> |
| 3. Shri Vijay Kumar | — <i>Director General of Audit (P&T)</i> |
| 4. Shri B.M. Oza | — <i>Director General of Audit (Central Revenue)</i> |
| 5. Shri Vikram Chandra | — <i>Pr. Director (Reports Central)</i> |
| 6. Smt. Anita Pattanayak | — <i>Director (Railways)</i> |
| 7. Shri P.S. Dewan | — <i>Deputy Director</i> |

8. Shri Asim Sharma — Deputy Director

2. The Committee considered the following draft Reports:—

- | | | |
|----------|-----|-----|
| (i) *** | *** | *** |
| (ii) *** | *** | *** |
- (iii) Assessment of Lottery business [Action taken on 8th Report of PAC (10th Lok Sabha)]

The Committee adopted the above mentioned draft Reports without any amendment/modification.

3. The Committee authorised the Chairman to finalise these draft Reports in the light of the comments of Audit arising out of factual verification and also to present the same to Parliament.

The Committee then adjourned.

