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**A TREATISE
ON
INDIAN INCOME-TAX LAW & ACCOUNTS**

BY
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WITH FOREWORD BY
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LAW MEMBER, GOVERNMENT OF INDIA

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To
The Sacred Memory
of
My Father
Dwarkanath Dasgupta
and
As a Token of Affection
for
My Mother

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PREFACE

The literature on Indian Income-tax Law is rather meagre considering the growing importance of the subject. In the present work an attempt is made to discuss the Income-tax Law as it is; to analyse its Sections into their essential elements; to concentrate particularly on those Sections which require clearer elucidation; to show its applications to concrete cases and its implications in relation to accounting, indicating some of the points where changes in the law seem desirable. My own professional experience has convinced me that the Income-tax Law cannot be fully comprehended unless it is studied in relation to accounts. A treatment of the subject on these lines will throw light on both.

As the Income-tax Law will undergo amendments, I have thought it fit not to include in this book exhaustive citations of the numerous case decisions and departmental Rules and Instructions contained in the official Income-tax Manual. It has, however, included all the typical cases. A fuller treatment must await the actual amendment of the Act.

To write a Treatise on Income-tax Law, the problems presented in its practical working and its bearing upon accounts is a difficult undertaking for a person outside the Income-tax Department. But perhaps, for this very reason, the work brings to its treatment a more detached outlook, a frank criticism and an unbiassed interpretation in terms of accounts, and of the law, the administration of which is sometimes associated with acute controversies.

I regret that it was not possible for me to utilise the seventh edition of the Income-tax Manual which has been published just when my Treatise has already been in print.

PREFACE

I shall feel my labour amply rewarded if the work helps towards a sound understanding of the law and appreciation of its problems and also the lines on which the coming legislation should be framed (Appendix C). I need hardly add that the recent Experts' Report has received in this book due consideration on its most important recommendations.

I have every hope that assessees in general and lawyers, accountants and business-men in particular will find the Treatise useful. Appendix B has been prepared for purposes of ready reference for all assessees.

My acknowledgments to various authorities have been duly made in the body of the book. I have also consulted with profit the Income-tax Law Reports and Digests written by Messrs. P. R. Srinivasan, A. N. Aiyar and B. R. Jain.

The Hon'ble the Law Member of the Government of India, Sir N. N. Sircar, K.C.S.I., has very much encouraged me and placed me under a deep debt of gratitude by the valued Foreword which he has been pleased to write in the midst of his many engagements.

New Civil Lines, Lucknow,
20th February, 1938.

B. N. DAS GUPTA.

FOREWORD

Mr. B. N. Das Gupta's Treatise on Income-tax Law is a very useful addition to the publications on this subject. It is a welcome departure from the stereotyped handling of the subject, as the author has endeavoured with success to elucidate provisions of law by applying them to concrete cases and by showing their implications in accounting. Very few people outside the Income-tax Department are competent to handle the practical working of Income-tax Law, and the author deserves congratulations for his success in this difficult task.

New Delhi,
21st March, 1938.

N. N. SIRCAR
Law Member,
Government of India.

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APPENDIX A

ACT NO. XI OF 1922

An Act to consolidate and amend the law relating to Income-tax and Super-tax.

[As modified up to the 15th November, 1937.]

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax; it is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Indian Income-tax Act, 1922.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also, within the Indian States and the tribal areas, to British subjects who are in the service of the Crown or of a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf, and to all other servants of the Crown in the said States and areas.

(3) It shall come into force on the first day of April, 1922.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “ agricultural income ” means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in British India or subject to a local rate assessed and collected by officers of the Crown as such;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);

- (c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building;

(2) " assessee " means a person by whom Income-tax is payable;

(3) " Assistant Commissioner " means a person appointed to be an Assistant Commissioner of Income-tax under section 5,

(4) " business " includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(4A) " the Central Board of Revenue " means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924;

(5) " Commissioner " means a person appointed to be a Commissioner of Income-tax under section 5;

(6) " company " means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the Central Board of Revenue may, by general, or special order, declare to be a company for the purposes of this Act;

(6A) ' firm,' ' partner ' and ' partnership ' have the same meanings respectively as in the Indian Contract Act, 1872;

(7) " Income-tax Officer " means a person appointed to be an Income-tax Officer under section 5;

(8) " Magistrate " means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Central Government to try offences against this Act;

(9) " person " includes a Hindu undivided family;

(10) " prescribed " means prescribed by rules made under this Act;

(11) " previous year " means—

- (a) the twelve months ending on the 31st day of March next preceding the year for which the assessment

is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up :

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression "previous year" as then applicable to such assessee except with the consent of the Income-tax Officer and upon such conditions as he may think fit; or

- (b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Central Board of Revenue or by such authority as the Board may authorise in this behalf;

(12) "principal officer," used with reference to a local authority or a company or any other public body or any association, means—

- (a) the secretary, treasurer, manager or agent of the authority, company, body or association, or
 (b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(13) "public servant" has the same meaning as in the Indian Penal Code;

(14) "registered firm" means a firm registered under the provisions of section 26A;

(15) "total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16; and

(16) "unregistered firm" means a firm which is not a registered firm.

CHAPTER I

CHARGE OF INCOME-TAX

Charge of Income-tax.

3. Where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income,

profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals.

Application of Act.

4. (1) Save as herein after provided, this Act shall apply to all income, profits or gains, as described or comprised in section 6, from whatever source derived, accruing, or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

(2) Income, profits and gains accruing or arising without British India to a person resident in British India shall, if they are received in or brought into British India, be deemed to have accrued or arisen in British India and to be income, profits and gains of the year in which they are so received or brought notwithstanding the fact that they did not so accrue or arise in that year:

Provided that nothing contained in this sub-section shall apply to any income, profits or gains so accruing or arising prior to the 1st day of April, 1933, unless they are income, profits or gains of a business and are received in or brought into British India within three years of the end of the year in which they accrued or arose:

Provided further that nothing in this sub-section shall apply to income from agriculture arising or accruing in a State in India from land for which any annual payment in money or in kind is made to the State.

Explanation.—Income, profits or gains accruing or arising without British India shall not be deemed to be received or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in the balance sheet prepared in British India.

(3) This Act shall not apply to the following classes of income:—

- (i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.
- (ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.
- (iii) The income of local authorities.
- (iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the Provident Funds Act, 1897, applies.
- (v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries,

or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

- (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.
- (vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employé.
- (viii) Agricultural income.
- (ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of section 58A.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

CHAPTER II

INCOME-TAX AUTHORITIES

Income-tax authorities.

5. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely:—

- (a) The Central Board of Revenue,
- (b) Commissioners of Income-tax,
- (c) Assistant Commissioners of Income-tax, and
- (d) Income-tax Officers.

(3) The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment.

(4) The Central Government may appoint, for any area as many Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit. They shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of income and in respect of such areas as the Commissioner of Income-tax may direct and, where two or more Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area, in accordance with any orders which the Commissioner of Income-tax may make for the distribution and allocation of the work to be performed. The Commissioner may, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the

Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and, for the purposes of any case in respect of which such order applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner, respectively.

(5) The Central Board of Revenue may, by notification in the Official Gazette, appoint Commissioners of Income-tax, Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (3) and (4).

(6) Assistant Commissioners of Income-tax and Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the area in which they perform their functions.

CHAPTER III

TAXABLE INCOME

Heads of income chargeable to income-tax.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely:—

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Property.
- (iv) Business.
- (v) Professional earnings.
- (vi) Other sources.

Salaries.

7. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of the Crown, a local authority, a company, or any other public body or association, or by or on behalf of any private employer;

Provided that the tax shall not be payable in respect of any sum deducted from the salary payable by or on behalf of the Crown to any individual, being a sum deducted in accordance with the conditions of his service for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

Explanation.—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by or on behalf of the Crown or by a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf.

Interest on securities.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Central Government or of a Provincial Government or on debentures or other securities for money issued by or on behalf of a local authority or a company:

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee:

Provided further that no income-tax shall be payable on the interest receivable on any security of the Central Government issued or declared to be income-tax free:

Provided further that the income-tax payable on the interest receivable on any security of a Provincial Government issued income-tax free shall be payable by that Provincial Government.

Property.

9. (1) The tax shall be payable by an assessee under the head "Property" in respect of the *bonâ fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely:—

- (i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;
- (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value;

- (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction;
- (iv) where the property is subject to a mortgage, or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself;
- (v) any sums paid on account of land revenue in respect of the property;
- (vi) in respect of collection charges, a sum not exceeding the prescribed maximum;
- (vii) in respect of vacancies, such sum as the Income-tax Officer may determine having regard to the circumstances of the case:

Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value.

(2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year:

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent of the total income of the owner.

Business.

10. (1) The tax shall be payable by an assessee under the head "Business" in respect of the profit or gains of any business carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:—

- (i) any rent paid for the premises in which such business is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional part so used;
- (ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;
- (iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is

not in any way dependent on the earning of profits, the amount of the interest paid;

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause:

- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid;
- (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;
- (vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed:

Provided that—

- (a) the prescribed particulars have been duly furnished;
- (b) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and
- (c) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the Indian Income-tax Act, 1886, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be;
- (vi) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (vi), or any Act repealed hereby, or the Indian Income-tax Act, 1883, and the amount for which the machinery or plant is actually sold, or its scrap value;
- (viii) in respect of animals which have been used for the purposes of the business otherwise than as stock in

trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals;

- (viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;
- (viii a) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission:

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

- (a) the pay of the employee and the conditions of his service;
- (b) the profits of the business for the year in question; and
- (c) the general practice in similar businesses;
- (ix) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains:

Provided that nothing in clause (viii) or clause (ix) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or assessed at a proportion of or otherwise on the basis of any such profits or gains.

(3) In sub-section (2), the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.

Professional earnings.

11. (1) The tax shall be payable by an assessee under the head "Professional earnings" in respect of the profits or gains of any profession or vocation followed by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:—

- (i) any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, and not being personal expenses of the assessee;
- (ii) in respect of depreciation of buildings and depreciation and obsolescence of machinery, apparatus, appliances, plant, furniture or other capital assets being the property of the assessee and used solely for the purposes of such profession or vocation, the allowances specified in clauses (vi) and (vii) of sub-section (2) of section 10 subject to all the conditions specified in those clauses.

(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head.

Other sources.

12. (1) The tax shall be payable by an assessee under the head "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads).

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee.

Method of accounting.

13. Income, profits and gains shall be computed, for the purposes of sections 10, 11 and 12, in accordance with the method of accounting regularly employed by the assessee:

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

Exemptions of a general nature.

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.

(2) The tax shall not be payable by an assessee in respect of—

(a) any sum which he receives by way of dividend as a shareholder in a company where the profits or gains of the company have been assessed to income-tax; or

(b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm at the time of such assessment; or

(c) any sum which he receives as his share of the profits or gains of an association of individuals, other than a Hindu undivided family, company or firm, where such profits or gains have been assessed to income-tax.

Exemption in the case of life insurances.

15. (1) The tax shall not be payable by an assessee in respect of any sums paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred

annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act, 1897, applies.

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member.

(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the proviso to sub-section (1) of section 7 and any sums exempted under sub-section (1) of section 58F, exceed one-sixth of the total income of the assessee.

Exemptions and exclusions determining the total income.

16. (1) In computing the total income of an assessee sums exempted under the proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14 and section 15, shall be included.

(2) For the purposes of sub-section (1), any sum mentioned in clause (a) of sub-section (2) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received.

(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

- (a) so much of the income of a wife or minor child of such individual as arises directly or indirectly—
 - (i) from the membership of the wife in a firm of which her husband is a partner;
 - (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;
 - (iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or
 - (iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual; and
- (b) so much of the income of any association of individuals consisting of such individual and his wife as arises from assets transferred to the association by such individual.

Reduction of tax when margin above a certain limit is small.

17. Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit, he is liable to pay income-tax or to pay income-tax at a higher rate, the amount of income-tax payable by him shall, where necessary, be reduced

so as not to exceed the aggregate of the following amounts, namely:—

- (a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and
- (b) the amount by which his total income exceeds that sum.

CHAPTER IV

DEDUCTIONS AND ASSESSMENT

18. Payment by deduction at source.

(2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax, but not super-tax, on the amount payable at the rate applicable to the estimated income of the assessee under this head:

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(2A) Notwithstanding anything hereinbefore contained for the purpose of making the deduction under sub-section (2), there shall be included in the amount payable any income chargeable under the head "Salaries" which is payable to the assessee out of India by or on behalf of the Crown, and the value in rupees of such income shall be calculated at the prescribed rate of exchange.

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, unless otherwise prescribed in the case of any security of the Central Government, at the time of payment, deduct income-tax, but not super-tax, on the amount of the interest payable at the maximum rate.

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income herein referred to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be.

(3A) Where the Income-tax Officer has reason to believe that the total income of any person residing out of British India to whom any interest not being "Interest on securities" is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person

responsible for paying such interest to such person to deduct at the time of payment income-tax and super-tax at the rates determined by the Income-tax Officer to be applicable to the total income of such person in that year.

(3B) Where the person responsible for paying any interest not being "Interest on securities" to any person pays to that person in any year an amount of such interest exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for paying such interest shall, if he has not reason to believe that the recipient is resident in British India, and no order under sub-section (3A) has been received in respect of such recipient, deduct at the time of payment income-tax on the total amount of such interest at the rate appropriate to such total, and super-tax on the amount by which such total exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

(3C) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of British India and that the total income of such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.

(3D) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (together with the amount of any income-tax payable by the company in respect thereof) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has not reason to believe that the shareholder is resident in British India, and no order under sub-section (3D) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (together with the amount of such income-tax as aforesaid) constituted the whole total income of the shareholder.

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

Provided further that where such person or owner is a person whose income is included under the provisions of sub-section (3) of section 16 in the total income of another person that person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Central Government or as the Central Board of Revenue directs.

(7) If any such person does not deduct and pay the tax as required by or under this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax:

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 46 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax or super-tax in accordance with the provisions of sub-section (3), (3A), (3B), (3C) or (3D) shall, at the time of payment of interest or dividends, furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

Payment in other cases.

19. In the case of income chargeable under any head other than "Salaries" or "Interest on securities," and in any case where income-tax has not been deducted in accordance with the provisions of section 18 the tax shall be payable by the assessee direct.

Supply of information regarding dividends.

19A. The principal officer of every company shall, on or before the 15th day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.

Certificate by company to shareholders receiving dividends.

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Supply of information regarding interest.

20A. The person responsible for paying any interest not being "Interest on securities" shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than one thousand rupees as may be prescribed in this behalf, together with the amount paid to each such person.

Annual return.

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing—

- (a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;
- (b) the amount of the income so received by each such person, and the time or times at which the same was paid;
- (c) the amount deducted in respect of income-tax from the income of each such person.

Return of income.

22. (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year:

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.

(2) In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion, of such an

amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

(4) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (2) a notice requiring him on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require:

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

Assessment.

23. (1) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and, in the case of a registered firm, may cancel its registration:

Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer, to the firm intimating his intention to cancel its registration.

23A. (1) Where the Income-tax Officer is satisfied that any firm or other association of individuals carrying on any business, other than a Hindu undivided family or a company, is under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon.

Explanation.—A member of a firm or association who owns the whole or the major portion of the capital of the firm or association shall not by reason only of that fact be deemed to control the firm or association.

(2) Where the Income-tax Officer is satisfied that a company is under the control of not more than five of its members and that its profits and gains are allowed to accumulate beyond its reasonable needs, existing and contingent, having regard to the maintenance and development of its business, without being distributed to the members, or that a reasonable part of its profits and gains, having regard to the said needs, has not been distributed to its members in such manner as to render the amount distributed liable to be included in their total income, and that such accumulation or failure to distribute is for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits and gains so accumulated or not distributed, the Income-tax Officer may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income-tax by the company shall not be determined, and thereupon the proportionate share of each member in the profits and gains of the company, whether such profits and gains have been distributed to the members or not, shall be included in the total income of such member for the purpose of his assessment thereon.

Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested.

Explanation.—For the purpose of this sub-section,—

- (a) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company, not being a company to which the provisions of this sub-section apply, or of two or more companies none of which is a company to which those provisions apply;
- (b) a company shall be deemed to be a company in which

the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public;

- (c) unless the contrary is proved, a company shall be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or of relatives or nominees of those persons;
- (d) "nominee" means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person.

(3) The Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the firm, association or company concerned an opportunity of being heard.

(4) (i) Where any member of a firm or association of individuals makes default in the payment of tax on his share of profits and gains which has been included in his total income under the provisions of sub-section (1) such tax may be recovered from the firm or association, as the case may be.

(ii) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (2), the tax payable in respect thereof shall be recoverable from the company and may be recovered from such member, if there are not sufficient funds in the hands of the company to pay the tax, or if the winding up of the company has commenced.

(iii) Where tax is recoverable from a company, firm or other association under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company, firm or association shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI.

(5) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.

Set-off of loss in computing aggregate income.

24. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss off against his income, profits or gains under any other head in that year.

(2) Where the assessee is a registered firm, and the loss sustained cannot wholly be set off under sub-section (1), any member of such firm or any person who being a minor has been admitted to the benefits of partnership in such firm shall be entitled to have set off against any income, profits or gains of the year in which the loss was sustained in respect of which the tax is payable by him such amount of the loss not already set off as is proportionate to his share in the firm or to his share of the benefits of partnership, as the case may be.

Assessment in case of departure from British India.

24A. (1) When it appears to the Income-tax Officer that any person may leave British India during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income for the period from the expiry of the last previous year for which he has been assessed to the probable date of his departure from British India. For each completed previous year included in this period an assessment shall be made on the total income of such person at the rate at which it would have been charged had such income been fully assessed, and for the period from the expiry of the last of such previous years to the probable date of departure, the Income-tax Officer shall estimate the total income of such person and assess it at the rate in force for the financial year in which such assessment is made:

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains which have escaped assessment or have been assessed at too low a rate in respect of which he is debarred from issuing a notice under section 34.

(2) For the purpose of making an assessment under sub-section (1) the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 22, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the period first referred to in sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure; and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 22,

Tax of deceased person payable by representative.

24B. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, the Income-tax Officer may serve on his executor, administrator or other legal representative a notice under sub-section (2) of section 22 or under section 34, as the case may be, and may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of sub-section (2) of section 22 or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person.

Assessment in case of discontinued business.

25. (1) Where any business, profession or vocation on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued in any year, an assessment may be made in that year on basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and

the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(4) Where an assessment is to be made under sub-section (1) or sub-section (3), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

Assessment after partition of a Hindu undivided family.

25A. (1) Where, at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied that a separation of the members of the family has taken place and that the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect:

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

(2) Where such an order has been passed, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no separation or partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it;

and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23:

Provided that all the separated members and groups of members shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.

(3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.

Change in constitution of a firm.

26. (1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessments on the firm and on the members thereof shall, subject to the provisions of this Act, be made as if the firm had been constituted throughout the previous year as it is constituted at the time of making the assessment, and as if each member had received a share of the profits of that year proportionate to his interest in the firm at the time of making the assessment.

(2) Where, at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding, as if he had been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year.

Procedure in registration of firms.

26A. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

Cancellation of assessment when cause is shown.

27. Where an assessee or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

Penalty for concealment of income or improper distribution of profits.

28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount,

he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership registered under this Act governing such distribution, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.

(4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(5) An Assistant Commissioner or a Commissioner, who has made an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer.

Notice of demand.

29. When the Income-tax Officer has determined a sum to be payable by an assessee under section 23, or when an order has been passed under sub-section (2) of section 25 or section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

Appeal against assessment under this Act.

30. (1) Any assessee objecting to the amount or rate at which he is assessed under section 23 or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to register a firm under section 26A or to make a fresh assessment under section 27, or to any order against him under sub-section (2) of section 25, or section 25A or section 28, made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order:

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the intimation of the refusal to pass an order under sub-section (1) of section 25A, or to register a firm under section 26A or of the date of the refusal to make a fresh assessment under section 27, as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

Hearing of appeal.

31. (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment,

or, in the case of an order refusing to register a firm under section 26A or to make a fresh assessment under section 27,

(c) confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment, as the case may be,

or, in the case of an order under sub-section (2) of section 25 or section 28,

(d) confirm, cancel or vary such order:

Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

Appeals against orders of Assistant Commissioner.

32. (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31, may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

Power of revision.

33. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the powers of an Assistant Commissioner under sub-section (4) of section 5.

(2) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.

Reference to Board of Referees.

33A. (1) Any person aggrieved by an order of an Income-tax Officer under sub-section (1) or sub-section (2) of section 23A may, within thirty days of the date on which he was served with notice of such order, lodge an appeal in the office of the Commissioner.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The Commissioner shall refer such appeal, with a statement of his own opinion thereon, to a Board of Referees for decision; and the Board of Referees shall decide the appeal after hearing the appellant and any person deputed by the Commissioner:

Provided that, before making a reference to a Board of Referees, the Commissioner may, and at the request of the appellant shall, in exercise of his powers of revision under section 33, decide the matters in dispute and thereupon the assessee may withdraw his appeal or proceed with it.

(4) The decision of the Board of Referees shall be forwarded to the Commissioner who shall transmit it to the Income-tax Officer who passed the original order, and shall also send copies to each Income-tax Officer who has made any assessment consequent upon such order; and where a decision reverses or modifies the order of the Income-tax Officer, fresh assessments shall be made in accordance therewith, or such consequential adjustments as may be required shall be made in any assessment already made.

(5) The decision of a Board of Referees shall not be subject to appeal to any Income-tax authority, and shall not be revised by the Commissioner in exercise of his powers under section 33.

(6) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half

shall be non-officials having business experience, and one shall be a judicial officer not inferior in rank to a Subordinate Judge or a Judge of a Small Cause Court who has held judicial office for a period of not less than ten years.

(7) Subject to the provisions of sub-section (6), the Central Board of Revenue may make rules regulating the formation, composition and procedure of Boards of Referees.

Income escaping assessment.

34. If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year, or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.

Rectification of mistake.

35. (1) The Commissioner or Assistant Commissioner may, at any time within one year from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 33 and the Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the appeal, revision or assessment, as the case may be and shall within the like period rectify any such mistake which has been brought to his notice by the assessee :

Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Commissioner, the Assistant Commissioner or the Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

Tax to be calculated to nearest anna.

36. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six

pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

Power to take evidence on oath, etc.

37. The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses, and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

Power to call for information.

38. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

- (1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;
- (2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses;
- (3) require any person whom he has reason to believe to be engaged in business, to furnish him with a return containing particulars of the location and style of his principal place of business, and of his branch businesses, if any, the names and addresses of his partners in any business, and the extent of his own share and the shares of all such partners in the profits of such business or businesses.

Power to inspect the register of members of any company.

39. The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

CHAPTER V.

LIABILITY IN SPECIAL CASES.

Guardians, trustees and agents.

40. In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

Courts of Wards, etc.

41. In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

Non-residents.

42. (1) In the case of any person residing out of British India, all profits or gains accruing or arising, to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax :

Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come within British India.

(2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and

the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom, or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

(3) Where any profits or gains have accrued or arisen to any person directly or indirectly from the sale in British India by him or by any agency or branch on his behalf of any merchandise exported to British India by him or any agency or branch on his behalf from any place outside British India, the profits or gains shall be deemed to have accrued and arisen and to have been received in British India, and no allowance shall be made under sub-section (2) of section 10 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains.

Agent to include persons treated as such.

43. Any person employed by or on behalf of a person residing out of British India, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent:

Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

Liability in case of a discontinued firm or partnership.

44. Where any business, profession or vocation carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm.

CHAPTER VA

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

Liability to tax of occasional shipping.

44A. The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

Return of profits and gains.

44B. (1) Before the departure from any port in British India of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.

(2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

Adjustment.

44C. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in any year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be.

CHAPTER VI

RECOVERY OF TAX AND PENALTIES

Tax when payable.

45. Any amount specified as payable in a notice of demand under sub-section (4) of section 23A or under section 29 or an order under section 31 or section 32 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30 or under section 33A, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

Mode and time of recovery.

46. (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

(1A) For the purposes of sub-section (1), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue:

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree.

(3) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid

to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(5) If any assessee is in receipt of any income chargeable under the head "Salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sum so deducted to the credit of the Central Government, or as the Central Board of Revenue directs.

(6) If the recovery of income-tax in any area has been entrusted to a Provincial Government under section 124 (1) of the Government of India Act, 1935, the Provincial Government may direct with respect to that area or any part thereof, that income-tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

Recovery of penalties.

47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28 or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

CHAPTER VII

REFUNDS

Refunds.

48. (1) If a shareholder in a company who has received any dividend therefrom satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared, or that his total income in such year is below the minimum chargeable with income-tax, he shall, on production of the certificate received by him under the provisions of section 20, be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates or at the rate applicable to the profits and gains of the company at the time of the declaration of such dividend, as the case may be.

(2) If a member of a registered firm or any person who being a minor has been admitted to the benefits of partnership in such firm, satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year, or that his total income of the previous year was below the minimum chargeable with income-tax, he shall be entitled to a refund on his share of those profits or gains calculated at the difference between those rates or at the rate at which income-tax has been levied, as the case may be.

(3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18, satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year, or that his total income of the previous year was below the minimum chargeable with income-tax, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates or at the rate at which income-tax has been deducted, as the case may be.

(3A) Where the shareholder referred to in sub-section (1), or the member of a registered firm or the minor admitted to the benefits of partnership referred to in sub-section (2) or the owner of a security referred to in sub-section (3) is a person whose income is included under the provisions of sub-section (3) of section 16 in the total income of another person, the provisions of sub-sections (1), (2) and (3) shall apply as if that person were himself the person entitled to a refund under those sub-sections.

(4) For the purposes of this section, "total income" includes, in the case of any person not resident in British India, all income, profits and gains wherever arising, accruing or received, which, if arising, accruing or received in British India, would be included in the computation of total income under section 16.

(5) Nothing in this section shall entitle to any refund any person not resident in British India who is neither a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914, nor a subject of a State in India.

General power to make refunds.

48A. (1) If any case not provided for by section 48 or by the provisions relating to refunds elsewhere contained in this Act the Income-tax Officer is satisfied, upon claim made in this behalf, that tax has been paid by or on behalf of any person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, the Income-tax Officer shall allow a refund to such person of the amount so paid or so paid in excess.

(2) The Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall in like manner cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

(3) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief.

Relief in respect of United Kingdom Income-tax.

49. (1) If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid United Kingdom income-tax for that year in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section.

(2) In sub-section (1)—

- (a) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;
- (b) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged;
- (c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.
- (d) the expression "appropriate rate of United Kingdom income-tax" has the meaning assigned to that expression in section 27 of the Finance Act, 1920, as amended by the Finance Act, 1927.

Power to set off amount of refunds against tax remaining payable.

49A. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

Power of representative of deceased person or person disabled to make claim on his behalf.

49B. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 48 or 48A or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Limitation of claims for refund.

50. No claim to any refund of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year, as defined in clause (II) of section 2, in which the income arose on which the tax was recovered, whichever period may expire later :

Provided that a claim to refund under section 49 may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.

Appeal against refusal of refund.

50A. (1) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48 or 48A or 49 or to the amount of the refund made in any such case, may appeal to the Assistant Commissioner.

(2) The appeal shall be presented within thirty days of the date on which the refusal of the refund or the amount of the refund allowed was communicated to the appellant.

(3) The appeal shall be made in the prescribed form and shall be verified in the prescribed manner.

(4) The Assistant Commissioner may, after giving the appellant an opportunity of being heard, pass such orders as he thinks fit.

CHAPTER VIII

OFFENCES AND PENALTIES

Failure to make payments or deliver returns or statements or allow inspection.

51. If a person fails without reasonable cause or excuse—
- (a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46;
 - (b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished;
 - (c) to furnish in due time any of the returns mentioned in section 19A, section 20A, section 21, section 22, or section 38;
 - (d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 22, such accounts and documents as are referred to in the notice;
 - (e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39;

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

False statement in declaration.

52. If a person makes a statement in a verification mentioned in section 19A or section 20A or section 22 or sub-section (2) of section 26A or sub-section (3) of section 30 or sub-section (2) of section 32 or sub-section (2) of section 33A or sub-section (3) of section 50A, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

Prosecution to be at instance of Assistant Commissioner.

53. (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner.

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

Disclosure of information by a public servant.

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of

any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine:

Provided that nothing in the section shall apply to the disclosure—

- (a) of any such particulars for the purposes of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or
- (b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or
- (c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or
- (cc) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or
- (d) of such facts, to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act:

Provided further that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26A, or to the giving of evidence by a public servant in respect thereof:

Provided further that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER IX

SUPER-TAX

Charge of super-tax.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Central Legislature :

Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

Total income for purposes of super-tax.

56. Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, unregistered firm or other association of individuals shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

Non-resident partners and shareholders.

57. (1) In the case of any person residing out of British India who is a member of a registered firm, and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share.

(2) Where any person pays any tax under the provisions of this section on account of another person who is residing out of British India, credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident person under the provisions of sections 42 and 43.

Application of Act to super-tax.

58. (1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 3, the proviso to sub-section (1) of section 7, the second and third provisos to section 8, sub-section (2) of section 14, and sections 15, 17, 19, 20, 21, 48, 58F and sub-sections (2) and (3) of section 58G shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

(2) Save as provided in sub-section (3A), (3B), (3C) and (3D) of section 18, section 57 and section 58H super-tax shall be payable by the assessee direct.

CHAPTER IXA

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS

Definitions.

58A. In this Chapter, unless there is anything repugnant in the subject or context,—

- (a) a “ recognised provident fund ” means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;
- (b) an “ employer ” means—
 - (i) a Hindu undivided family, company, firm or other association of individuals or persons, or
 - (ii) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11, maintaining a provident fund for the benefit of his or its employees;
- (c) an “ employee ” means an employee participating in a provident fund, but does not include a personal or domestic servant;
- (d) a “ contribution ” means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;
- (e) the “ balance to the credit ” of an employee means the total amount to the credit of his individual account in a provident fund at any time;
- (f) the “ annual accretion ” to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest;
- (g) the “ accumulated balance due ” to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund; and
- (h) the “ regulations of a fund ” means the special body of regulations governing the constitution and administration of a particular provident fund.

The according and withdrawal of recognition.

58B. (1) The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) The Central Government may, at its discretion, direct the Commissioner of Income-tax to refuse to accord recognition to any provident fund, or may, at any time, withdraw recognition from any recognised provident fund.

(3) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(4) An order withdrawing recognition shall take effect from the day on which it is made.

(5) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

Conditions to be satisfied by a recognised provident fund.

58C. (1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Central Government may, by rule, prescribe—

- (a) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.
- (b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.
- (c) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.
- (d) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums.

- (e) The fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable save with the consent of all the beneficiaries.
- (f) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

- (g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.
- (h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the Central Government may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

Power to relax restrictions of employer's contributions in certain cases.

58D. Subject to any rules which the Central Government may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 58C—

- (a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem; and
- (b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

Annual accretion deemed to be income received.

58E. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58F, shall be liable to income-tax and super-tax:

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

Exemption of annual accretion from income-tax.

58F. (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year.

(2) In the accounts of a recognised provident fund, the contributions exempted from income-tax under sub-section (1) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately. Such interest shall be exempt from payment of income-tax, in so far as it is allowed at a rate not exceeding such rate as the Central Government may, by modification in the Official Gazette, fix in this behalf.

Exemption of accumulated balance from income-tax and super-tax.

58G. (1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th March, 1930.

(2) Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and shall be excluded from the computation of his total income:

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

(3) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (2) the Income-tax Officer shall calculate the total of the various sums of income-tax

from the payment of which the contributions and interest credited to the employee's individual account have been exempted under the provisions of sub-sections (1) and (2) of section 53F, and such total shall be payable by the employee, in addition to any other income-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

Deduction at source of Income-tax payable on accumulated balances due.

58H. The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (3) of section 58G and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 58J, and sub-sections (4) to (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries."

Accounts of recognised provident funds.

58I. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

Treatment of balances in newly recognised provident funds.

58J. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (h) of sub-section (1) of section 58C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

Treatment of fund transferred by employer to trustee.

58K. (1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall be deemed to be an expenditure by the employer within the meaning of clause (ix) of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

Provisions relating to rules.

58L. (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59.

(2) In addition to any power conferred by this Chapter, the Central Government may make rules—

- (a) prescribing the statements and other information to be submitted with an application for recognition;
- (b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;
- (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;
- (d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and
- (e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

Application of this Chapter.

58M. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies.

CHAPTER X

MISCELLANEOUS

Power to make rules.

59. (1) The Central Board of Revenue may, subject to the control of the Central Government, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of British India or for such part thereof as may be specified.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—
 - (i) incomes derived in part from agriculture and in part from business;
 - (ii) insurance companies;
 - (iii) persons residing out of British India;

- (b) prescribe the procedure to be followed on applications for refunds;
- (c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act;
- (d) prescribe the year which, for the purpose of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920; and
- (e) provide for any matter which by this Act is to be prescribed.

(3) In cases coming under clause (a) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Central Board of Revenue, is unreasonable, the rules made under that sub-section may—

- (a) prescribe methods by which an estimate of such income, profits and gains may be made, and
- (b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax;

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

(4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.

(5) Rules made under this section shall be published in the Official Gazette, and shall thereupon have effect as if enacted in this Act.

Power to make exemptions, etc.

60. (1) The Central Government may, by notification in the Official Gazette, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reasons of his having received in any one financial year salary for more than twelve months, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant such relief as it may think fit.

Appearance by authorised representative.

61. Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceeding under this Act, may attend either in person or by any person authorised by him in writing in this behalf.

Receipts to be given.

62. A receipt shall be given for any money paid or recovered under this Act.

Service of notices.

63. (1) A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and, in the case of any other association of individuals, be addressed to the principal officer thereof.

Place of assessment.

64. (1) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business is carried on in more places than one, by the Income-tax Officer of the area in which his principal place of business is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement, by the Central Board of Revenue:

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

Indemnity.

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Statement of case by Commissioner to High Court.

66. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VIII, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

(2) Within sixty days of the date on which he is served with notice of an order under section 31 or section 32 or of an order under section 33 enhancing an assessment or otherwise prejudicial to him or of a decision by a Board of Referees under section 33A the assessee in respect of whom the order or decision was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order or decision and the Commissioner shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court:

Provided that a reference shall lie from an order under section 33 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 31 or section 32, revised by the order under section 33:

Provided further that, if, in exercise of his power of revision under section 33, the Commissioner decides the question, or if the Commissioner rejects the application on the ground that it is time-barred or otherwise incompetent, or if, in exercise of his powers under sub-section (3), the Commissioner refuses to state the case, the assessee may within thirty days from the date on which he receives notice of the order passed by the Commissioner withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may within six months from the date on which he is served with notice of the refusal apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

(3A) If, on any application being made under sub-section (2), the Commissioner rejects it on the ground that it is time-barred, the assessee may, within two months from the date on which he is served with notice of the order of the Commissioner, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to treat the application as made within the time allowed under sub-section (2).

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case:

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

(7A) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (3A).

(8) For the purposes of this section "the High Court" means—

- (a) in relation to the North-West Frontier Province and British Baluchistan, the High Court of Judicature at Lahore;
- (b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad; and
- (c) in relation to the province of Coorg, the High Court of Judicature at Madras.

References to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

66A. (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under

section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (5) or sub-section (7) of section 66:

Provided further that the High Court may, on petition made for the execution of the order of His Majesty in Council in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of His Majesty in Council in the manner provided in sub-sections (5) and (7) of section 66 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed—

- (a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or
- (b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

Bar of suits in Civil Court.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Officer of the Crown for anything in good faith done or intended to be done under this Act.

Computation of periods of limitation.

67A. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

APPENDIX B

The assessee to remember the following provisions:—

(1) A company is bound to submit a Return by 15th June every year. Section 22(1)

(2) None else is bound to submit any Return unless the I.T.O. has served a notice and a form. Section 22(2)

(3) I.T.O. can ask for accounts and documents to be produced. Section 22(4)

(4) Where I.T.O. thinks that the Return submitted is incomplete or incorrect, he shall serve a notice requiring attendance or production of evidence in support of his Return. Section 23(2)

(5) Where notice and form served (generally notices under section 22(4) and 23(2) are served together) but

(a) no Return is submitted, or (b) fails to produce accounts and documents, I.T.O. shall make a reasonable assessment. Section 23(4)

(6) A victim of section 23(4) can only pray for cancellation of assessment by showing sufficient cause. Section 27

(7) If I.T.O. refuses to cancel and to make a fresh assessment, assessee can appeal to Assistant Commissioner against order passed under section 27, only as regards the propriety of assessment under section 23(4) or his refusal to consider the circumstances under which the assessee might have been prevented from complying with I.T.O.'s requisitions. Section 30

(8) Therefore every person when called upon to make a Return should submit a valid Return, then produce evidence to Income-tax Officer, if necessary, and then appeal to the Assistant Commissioner.

(9) Notice under section 22(4) can be issued immediately after the notice under section 22(2) has been served but cannot complete the assessment until the date of filing the Return has expired.

(10) No appeal lies against the assessment made under section 23(4); only indirectly through sections 27 and 30 appeal possible.

APPEAL

(11) Appeal is to be presented within 30 days of the receipt of the notice of demand or of the date of refusal to make a fresh assessment (form in Rule 21).

(12) There is no second appeal against Assistant Commissioner's decision.

(13) But in two cases, *viz.*, when Assistant Commissioner himself imposes a penalty or enhances an assessment, an appeal may be made to the Commissioner (Section 32).

(14) Assessee may apply any time (though by executive orders, Commissioners have been forbidden to revise a case after the lapse of one year from the date of the order of the subordinate authority) to the Commissioner for revision of any proceedings (Section 33)

but if the assessee thinks that the matter may have to be referred to High Court, he should apply to the Commissioner within 60 days of the service of the notice of the appellate order, for, in that case, he can add a prayer for reference to High Court.

(15) On an application to Commissioner for a reference to High Court, if the Commissioner refuses, the assessee can, within 6 months of the refusal, apply to High Court to call upon the Commissioner to state the case and refer it to the said court.

STAMPS AND COURT-FEES

(16) Affidavit must be stamped.

(17) Letter of Authority which is merely a bare letter of authorisation empowering a person to appear on behalf of the assessee, is not to be stamped.

(18) Letter of Authority which constitutes a "power of attorney" must be stamped.

(19) Copies or extracts will be charged with stamp-duty provided they are not chargeable to court-fees.

(20) Wakalatnama or Mukhtarnama for conducting a case before the Income-tax Authorities is to be charged with court-fees.

(21) Petition presented to any executive officer of the Income-tax Department for the purpose of obtaining a copy of any order passed or any other document is chargeable with court-fees.

(22) Copies of orders or other proceedings of the department should bear court-fees.

(23) Memorandum of appeal presented to Income-tax Department is to be charged with court-fees.

MISCELLANEOUS

(24) Mere forwarding particulars of depreciation will not entitle an assessee to depreciation allowance; he shall file the particulars in the prescribed form.

(25) He must remember that he is entitled to unabsorbed depreciation in future years. It is depreciation only which can be carried forward if not fully allowed in the year.

(26) Tax at the maximum rate must have been deducted on Interest on Securities and dividends and from profits of registered firm; and where the total income is below one lac rupees, refund is allowable. In claiming refund, certificates relating to income from interest on securities and dividends should be filed.

(27) Life Insurance premium exemption is up to 1/6 of Total Income.

(28) An assessee may not draw his salary due. By deferring drawing of salary, he can avoid higher rate of tax.

(29) In the case of a new business, no assessment will be made in the first year; assessment in the second year will be made on the profits of the previous year.

(30) Claim for refund must be made within one year (see pages 136, 137).

APPENDIX C

Suggestions.

- (1) Section 1 should be made more comprehensive.
- (2) Section 2:—
 - (a) Definition of agricultural income should be narrowed down to Agriculture, Horticulture, etc. only. Broad outlines of exemptions have been suggested. (Page 24).
- (3) (b) There should be no exemption for Tea Industry. (Page 23).
- (4) (c) Agricultural income may be taxed by provincial governments where the total income from rentals exceeds Rs. 75,000 or Rs. 100,000. (Page 22).
- (5) (d) Question of taxing Forest income should again be seriously considered. (Page 23).
- (6) Section 3:—
 - (a) Slab system, as recommended in the Experts' Report, should not be adopted. (Page 34).
- (7) (b) Exemption of first 1500/- (as a part of the slab system recommended in the Experts' Report) should be accepted. (Page 33).
- (8) (c) Reduce the steepness of the rates and create more intermediate stages of income. In such a case marginal relief may not be needed. (Page 34).
- (9) (d) Some statutory concessions be given to audited accounts; it will pay the State in the long run. (Page 35).
- (10) (e) Profits from current year's income or previous accumulations declared and paid in any form (cash, share or debenture) should be deemed as dividends received by shareholders. (Pages 33, 93).
- (11) Section 4:—
 - (a) Any payment from the British Indian Exchequer received by any person in any part of the world should be taxed as it is earned in British India.
- (12) (b) "Whole Income" basis as recommended in the Experts' Report should not be accepted. The present basis together with "Remittance" provision is reasonable and satisfactory. But the term "accrue" should be so defined as to include every item of direct and indirect accrual. (Page 37).

Illustration:—

A Maharaja having estate in British India takes a loan of rupees five crores in England on the security of his estate in British India agreeing to pay the interest in England. In this case, the interest is not liable to Indian Income-tax as it is considered not to have accrued in British India though the estates are in British India. As this mortgage is an essential condition of the transaction, interest payable in England should be regarded as income earned in British India.

- (13) (c) If dividend is declared by a rupee company out of its profits but the dividends are paid out in U.K. from the income of the company's sterling investments (which income has not been brought into British India and where the company is not assessed to the tax on that portion of the company's investments) then will not the company's income from foreign investments to the extent of the amount of such dividend be deemed to have been brought into British India and be taxable under section 4(2)?
- (14) (d) Every Individual, Firm or Company carrying on business in India and having sterling securities in U.K. should furnish to the I.T. authorities every year by 15th June, the amount of money remitted from outside British India and received in British India within the previous year; and should specify what portion represents income and what portion capital.
- (15) (e) Where any company (sterling or rupee) carrying on business in British India *invests its Indian income*, profits or gains in foreign investments, income from such foreign investments should be taxed.
- (16) (f) Commercial undertakings of local authority should be taxed.
- (17) Section 12:—
- (a) A Tea Company, an assessee as such, is taxed on 40% of its profits.
- (b) but when a shareholder is assessed as an individual, the dividend received must be taxed on the full 100% (no matter whether it is tea or coal or sugar dividend) for the dividend is taxable under section 12.
- If the Concession enjoyed by the source (*e.g.*, Tea Company) continues to be enjoyed by everybody in receipt of money from that source, then an absurd position may arise, *e.g.*, University being exempt from tax, all teachers getting salary from the exempted earnings of the university should, according to the above, enjoy exemption. In short, concession granted to a tea company under section 2, cannot be extended to its shareholders who must be assessed under section 12.

(18) Section 14:—

This section should be so redrafted that a case like Hungerford Investment Co. may not be repeated. (Page 76). The previous point has also to be borne in mind.

(19) Section 23(4):—

The calling for books of accounts under section 22(4), before assessing under section 23(4), should not be left to the option of the I.T.O.; the I.T.O. should be *required*, when assessment under section 23(4) is going to be made, to give a notice again to the defaulter assessee to produce accounts on the basis of which assessment should be made, if accounts would be available even so late as at that time. This provision in favour of the assessee is necessary.

(20) Section 23A:—

All loopholes should be removed so that a case like David Yule's Estate may not be repeated. (Page 92).

(21) Section 26:—

Should be more precise in view of High Court decisions. (Page 100).

(22) Section 34:—

Should be much more precise. Power of I.T.O. should be restricted. Assessment once made should be final, except for rectification of an arithmetical error and not rectification or application of any principle. Frivolous re-opening of a case by I.T.O. should be strictly prohibited. (Page 112).

(23) Section 42:— (Pages 124, 125).

(a) All non-resident and foreign companies be treated alike for taxation purposes.

(24) (b) Trading *in* and *with* be defined in the *Act*.

(25) (c) Tests be provided in the *Act* to find out definitely whether agency exists or not.

(26) (d) Business done in any country outside British India through an agent in India should be regarded as business done *in* India and be assessed. Section 42 should be so amended as to include and render taxable any profits wherever arising from business done *in* or *with* India.

(27) Section 49 be entirely removed from the *Act*. (Pages 135, 136).

(28) Section 58A, etc.:—

These are unnecessarily complicated provisions and are of doubtful advantages in many cases. With a few safeguards, such funds may be allowed to come under the *Act* of 1925. (Page 140).

(29) Section 60:— (Pages 147, 151).

Instructions relating to the assessment of Cooperative Society are not at all clear or complete. The main act (not instructions merely) should provide for it. The Society should be a separate subject under the charging section 3. *Society* as assessee and *shareholder* as assessee should be clearly dealt with

(30) Hindu Undivided Family:—(Pages 159, 160).

(a) How can an absolute transfer to wife be included in husband's assessment?

(b) "Benami" transaction is taxed but deliberate conversion of income into capital cannot be; as if, the first transaction (which is done in many cases for purposes other than evading taxation) is a greater offence than a clear case of evasion of taxation by conversion.

(31) (c) The suggestion in the Experts' Report of assessing H.U.F. on 50% after aggregating the family income and the income of all the members is wholly unacceptable.

(32) Life Insurance Companies:— (Pages 167, 173).

(a) If after a triennial valuation, the Company adopts a quinquennial valuation, how to assess in the fourth year?

(33) (b) Rules 25 to 35 are a machinery to find out the assessable profits. Once found out, why the profit should not be fixed against each year of the averaged years? Otherwise, first few years go unassessed and the defect in (a) above remains.

(34) Indian States and Ruling Princes both should be liable to income-tax and super-tax in respect of interest on securities. (Page 54).

(35) Pensions to officers of Government residing out of India and pensions to other employees residing out of India should be assessed to tax. (Page 145).

(36) Leave allowance or salary paid to officers of Government or of private employers when they are on leave or on duty in U.K. should be assessed to tax. (Page 145).

(37) Though High Court decisions clearly forbid whimsical assessment purporting to punish the assessee under the protection of section 23(4) for his non-compliance with I.T.O.'s requisitions, still, assessments from time to time clearly indicate that a strong inclination to punish such an assessee does persist in the minds of the Income-tax authorities. It is a regret that the department does not fully realise the difficulties of an average businessman of to-day. A sympathetic wider outlook is a remedy. The other remedy is a provision for appeal.

- (38) A tendency to overassess has become the general practice. This is regarded by the I.T.O. as erring on the right-side for (1) the I.T.O. feels free to overassess without any sense of restraint or restriction, (2) impossible amount of highly responsible work thrust upon the Inspectors, Examiners and Officers can give them absolutely no time to think for themselves or to study judgments; speed and larger revenue have become much more important than judicial disposal of cases. The result is overassessment. Apart from usual trouble and waste of time, overassessment means 3 to 4 months of additional harassment, botheration and financial loss in connection with appeals, etc., and means an equally serious hardship, *viz.*, depositing a large sum of money prior to lodgment of appeal. If the Income-tax Authorities only keep in mind that businessmen have to do *business* and not to waste time and money in *fighting an over-assessment*, a wider outlook can be secured towards Indian business. The remedy lies more in changing the attitude of the department towards its assesseees than changing the words of the law. The other equally important remedy lies not in increasing higher posts but in increasing the posts of Income-tax Examiners and Officers.
-

APPENDIX D

Rates of Income-tax.

| A. In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company | Rate per rupee. |
|---|-----------------|
| (1) When the total income is less than Rs. 2,000 | nil. |
| (2) When the total income is Rs. 2,000 or upwards, but is less than Rs. 5,000 | 6 pies. |
| (3) When the total income is Rs. 5,000 or upwards, but is less than Rs. 10,000 | 9 pies. |
| (4) When the total income is Rs. 10,000 or upwards, but is less than Rs. 15,000 | 12 pies. |
| (5) When the total income is Rs. 15,000 or upwards, but is less than Rs. 20,000 | 16 pies. |
| (6) When the total income is Rs. 20,000 or upwards, but is less than Rs. 30,000 | 19 pies. |
| (7) When the total income is Rs. 30,000 or upwards, but is less than Rs. 40,000 | 23 pies. |
| (8) When the total income is Rs. 40,000 or upwards, but is less than Rs. 1,00,000 | 25 pies. |
| (9) When the total income is Rs. 1,00,000 or upwards. | 26 pies. |
| B In the case of every company and registered firm, whatever its total income. | 26 pies. |
| Surcharge 1/12. | |

Super-Tax.

Rs. 30,000 exempted in every case.

| | | |
|--|--|---|
| Company First Rs. 20,000 (nil) Every rupee in excess (1 anna) | Hindu Undivided Family. First 45,000 (nil) Next Rs. 25,000 (15 pies) | Individual, un-regis- tered firm etc. First Rs. 20,000 (9 pies) Next Rs. 50,000 (15 pies) |
| | 100,000 | 100,000 |

| | Rs. | a. p. |
|-------------|-----|-------|
| Next 50,000 | 1 | 9 |
| Next 50,000 | 2 | 3 |
| Next 50,000 | 2 | 9 |
| Next 50,000 | 3 | 3 |
| Next 50,000 | 3 | 9 |
| Next 50,000 | 4 | 3 |
| Next 50,000 | 4 | 9 |
| Next 50,000 | 5 | 3 |
| Next 50,000 | 5 | 9 |

or every rupee of the remainder of such excess 6 3
 Surchage 1/12.

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