

Law of Income-tax

IN

India and Burma

BY

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Being an up-to-date, analytical and critical exposition of the Law relating to Income-tax, in India and Burma, incorporating The Income-tax Manual 6th edition as amended up-to-date.

WITH A FOREWORD

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PUBLISHED BY

NEWUL KISHORE BOOK DEPOT, LUCKNOW

1937

Price Rs. 10

Printed by D. N. Coondoo
at the Amrita Press, Allengunj, Allahabad.

TO

K. P. VERMA, Esq., Rai Bahadur

COMMISSIONER OF INCOME-TAX, CENTRAL & UNITED PROVINCES

THIS BOOK

IS

With his kind permission

RESPECTFULLY DEDICATED

FOREWORD.

The Income-tax law, originally introduced as a temporary measure has long since become permanent, and in recent years India vies with the United Kingdom in raising revenue from that source and the recent report of the Income-Tax Enquiry Committee that had been appointed in response to my Bill on the subject, introduced merely to ensure its more equitable levy by providing for its examination by an independent tribunal, has resulted in proposals one of which has already been enacted, and the rest will probably be pushed on with resulting in a wholesale revision of the assessment and its procedure. But subject to this, and apart from it, the assessee needs clarification of the law which taxes his income, and Mr. R. N. Srivastava, himself an Income-Tax Officer, has completed a Commentary which should go far to solve the assessee's conundrums as to the income he has made and the tax to which he is liable.

I hope Mr. Srivastava's attempt in this direction will receive the due recognition that it deserves.

H. S. GOUR.

NAGPUR.

7th March, 1937.

PREFACE

The difficulties experienced by me in my work as Income-tax Officer induced me to undertake this work. The law relating to income-tax is primarily to be found in the Indian Income-tax Act which applies to the whole of British India. The Act gives power for the framing of rules which are peculiar to income-tax, inasmuch as they not only have the force of law, but are deemed to be part of the Act itself, so that the legislature has, in a way, authorized additions to the Act by means of rules made by the executive. Rules so made are contained in Part II of the I. T. Manual. Over and above such rules, are executive orders which are meant to serve as guides and some sort of commentaries. These executive orders have not the force of law and the interpretation of the Act or rules to which they give expression, may or may not be adopted by courts. They are contained in Part III of the Income-tax Manual. In order to find the law on a particular point, an Income-tax Officer has to look to the Act, the rules and the particular paragraphs of the Manual applicable to the point concerned. The various High Courts as well as the Privy Council are busy interpreting the Act and rules, and their rulings are regarded as authority, the rulings of the Privy Council being authority throughout British India, while the rulings of the various High Courts are binding in all areas subject to their jurisdiction. At times there is conflict of decision between one High Court and another. In such a case the peculiar position is created, inasmuch as the law as laid down by each of the High Courts would have to be followed within their respective jurisdictions, until the conflict is set at rest either by a pronouncement of

Their Lordships of the Privy Council, or by a Legislative enactment. Income-tax being an all-India subject, it is curious to find the same law being applied differently in different parts of the country to which it applies.

It would thus appear that in order to correctly apply the law, one has to be acquainted not only with the Act and the rules but also with the pronouncements of the High Courts and the Privy Council. So far as the Income-tax authorities are concerned, they are hardly in a position to decide against the instructions and executive orders, though they may not have the force of law for the High Courts, so that for all practical purposes the instructions and orders are as much law as the Act or rules.

An exposition of the law of Income-tax to be complete must, therefore, embody all the above sources. There are two ways of dealing with such material. One way is to follow the plan of Halsbury's Laws of England and narrate the law in the writer's own language, giving references wherever necessary. This method has its disadvantage in a work of ready reference, inasmuch as it does not give the reader the exact language of the law, but only the author's exposition of it, and to that extent its utility as a book of reference is diminished. The second method is to quote the Act, the rules and instructions in extenso in appropriate places, and make comments in the light of judicial decisions wherever necessary. In this way, the language of the law is made available to the reader, who can read and interpret it for himself, while the advantage of an exposition of the law in the light of judicial decisions is also retained. I have chosen to follow the latter method. I have also quoted relevant provisions of other enactments, to which it may become necessary to refer, thus trying to make the book

complete for income-tax purposes without reference to any other book.

Income-tax Officers have not the benefit of hearing cases argued on behalf of the Crown. They have to be the judges as well as taxing officers and have to interpret the law for the Crown so that the revenue may not suffer, while at the same time bearing in mind the cardinal principle of interpretation, that all fiscal statutes should be interpreted strictly in favour of the subject, in view. In narrating the law in the manner above referred to, I have tried to give an analytical and critical exposition of it, and to make the book really useful alike to officers, having to apply income-tax law, and to lawyers and laymen who have to deal with income-tax matters. If the book is helpful the author shall feel required for his labours.

FATEHGARH, }
17th September, 1936. }

R. N. SRIVASTAVA,
INCOME-TAX OFFICER.

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LIST OF ABBREVIATIONS

A. L. J.	Allahabad Law Journal.
A. I. R.	All India Reporter.
A. L. R.	Allahabad Law Reporter.
A. W. R.	Allahabad Weekly Reporter.
I. L. R.	Indian Law Reporter.
C. W. N.	Calcutta Weekly Notes.
K. B. D.	King's Bench Division.
Q. B. D.	Queen's Bench Division.
T. C.	Tax Cases.
I. T. C.	Income Tax Cases.
I. C.	Indian Cases.
I. T. L. J.	Income-tax Law Journal.
M. I. A.	Moor's Indian Appeals.
P. C.	Privy Council.
F. B.	Full Bench.
S. B.	Special Bench.
D. B.	Division Bench.
A. C.	Appeal Cases.
M. L. J.	Madras Law Journal.
B. L. R.	Bombay Law Reporter.
A. W. N.	Allahabad Weekly Notes.
U. P. L. R.	U. P. Law Reporter.
Cr. L. J.	Cr. Law Journal.
Cr. L. T.	Criminal Law Times.
C. L. J.	Calcutta Law Journal.
I. A.	Indian Appeals.

ADDENDA

Section 4 (3)—The proper construction of the words “religious and charitable purposes” in the Income-tax Act is to be judged not by the personal law of the assessee but according to the general principles of construction applying to statutes.¹

Section 13—There is nothing in section 13 of the Income-tax Act to prevent the assessee from changing his method of accounting. What he must alter however, is his regular method, that is to say, he must abandon what, up to that time, has been his regular method, and start new regular method, and not merely a new method for a casual period.²

Section 48 (2)—The expression “a member of registered firm” in section 48 (2), Income-tax Act, 1922, as it stood before the amendment in 1933, can only mean a person who has entered into partnership with another person or persons. If a minor is incapable of entering into a partnership with another person or other persons he cannot be a member of a firm in which he is not a partner. As such a minor is not entitled to claim refund under section 48 (2).³

Section 66 (2)—The fee paid by assessee under section 66 (2), Income-tax Act, 1922, is part of the assessee's costs of reference.⁴

Section 2 (1)—The rent of the site of a flour mill cannot be regarded as rent or revenue derived from land which is used for agricultural purposes, and does not fall under section 2 (1). Nor does net profit from commission charged from tenants for sale of their produce on their behalf.⁵

¹ Commissioner of Income-tax Bihar and Orissa v. Humayun Raza 1936 I. T. L. J. page 264.

Sarupchand Pannalal v. Commissioner of Income-tax Bombay, 1936 I. T. L. J. page 261.

³ Jamshed Sorab Katrak v. Secretary of State for India, 1936 I. T. L. J. page 254.

⁴ Gopal Vaijnath Manohar v. Commissioner of Income-tax Bombay, 1936 I. T. L. J. page 258.

⁵ H. T. Conville and another v. Commissioner of Income-tax Lahore, 1936 I. T. L. J. page 153.

But Dharat income, *i.e.*, weighing charges levied by assesseees from tenants of land in addition to rent is agricultural income and exempt from income-tax.¹

Section (3)—An association incorporated under section 26 of the Indian Companies Act, as an association limited by guarantee not existing for earning profits, and prohibited under the law from declaring any dividends to its members, is liable to assessment, even though no relief under section 48 of the Act is available to such an association, as in case of other associations not incorporated under section 26 of the Indian Companies Act.²

The expression "other association of individuals" in Section 3, Income-tax Act, 1922, should be construed *ejesdem generis* with the word immediately preceding, *i.e.*, the word "firm." Thus, before there can be an association of individuals within the meaning of the section, it must first be shown that the association has at least some of the attributes of a firm or partnership, though not in the strictly legal sense of the term. The mere appointment by a body of co-owners of a common collecting agent will not convert such body of co-owners into an "association of individuals" within the meaning of section 3 of the Act.³

Section 4 (3) (ii)—The word "charitable" in section 4, sub-section (3), clause (ii), Income-tax Act has a technical significance other than the meaning which it bears in common parlance. Before an institution can be held to be "charitable" there must be an element of altruism; that is to say the beneficiaries must not be able to claim the benefit. Where the ostensible object of an association is to provide facilities of trade and to improve business and there is no privity between the association and outsiders and it is a "mutual concern" of the members who compose the association, the association cannot be said to be a "charitable institution" within the meaning of clause (ii) sub-section (3) of section 4.⁴

¹ Profynabad Stud Farm, Montgomery v. Commissioner of Income-tax Lahore, 1936 I. T. L. J. page 194.

² *In re* The Chamber of Commerce, Nagpur, I. T. L. J. page 127. June 1936.

Mufti Mohammad Aslam v. Commissioner of Income Tax U. P., T. L. J. page 233. October 1936.

⁴ *In re* the Chamber of Commerce, Hapur, I. T. L. J. page 136. June 1936.

Where the income of an association—a “mutual concern”—to promote trade and commerce is derived from its members only in the shape of a certain fixed amount on each transaction, registered in the association, and it is conceded by the Income-tax Commissioner that such income is not “income” from “business” within the meaning of section 6 (iv) Income-tax Act, the income is not taxable as income from “other sources” within the meaning of section 6 (vi) of the Act, as it is difficult to see from what “other sources” a mutual concern can derive profits.¹

Lamberdari fees do not constitute a special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the collection of the revenue. Section 2 (1) of the Act applies to the case of a person who gets agricultural income from the use of the land by direct operation. It is not applicable to a person who gets certain fees which constitute his remuneration for the work of the collection of the land revenue.

Section 4 (3) (i)—In order that a trust be held to be one wholly for religious or charitable purposes, it is necessary that there be no discretion left in the trustee but to apply the income to such purposes. However benevolent or liberal the objects of a trust may be, so long as the trustee has any discretion in applying the income to objects of any kind whatsoever, the trust cannot be supported as a charitable legacy.³

With a view to provide funds for payment of certain duties, a company having a large reserve fund of accumulated profits, issued bonus debentures to the share-holders and applied accumulated profits in satisfaction of the amount due on the issue of the debentures. The debentures were subsequently paid off by the company. Held, that by these transactions the share-holders cannot be deemed to have received any income, profits or gains within the meaning of section 4, Income-tax Act. Held further, that the personal motive or purpose of the individual share-holders, even if

¹ *In re* the Chamber of Commerce, Hapur, I. T. L. J. page 127. June 1936.

² *H. T. Conville and another v. Commissioner of Income-tax Lahore*, I. T. L. J. page 154. July 1936.

³ *Profynabad Stud Farm v. Commissioner of Income-tax Lahore*, 1934 I. T. L. J. page 194 at 209.

they held controlling interest in the company, was irrelevant, if it was made out that the company had in fact capitalised the accumulated profits.¹

Section 4 (1).—The assessee received in the United Kingdom payments of pensions granted by the Madras Government under the Civil Service Regulations of the Government of India. Held, that such payments in so far as they were not brought into British India had not the effect of attracting sub-section (2) of section 4, Income-tax Act and were not income accruing or arising in British India within the meaning of section 4 (1) of the Act.²

Section 6.—The sovereign legislative authority has inherent power to impose taxes or alter the position of any subject of the state notwithstanding any previous engagement which may have been entered into between the sovereign power and the subject.

If there be any earlier legislation or a treaty between the sovereign power and the subject for special exemption from future taxation followed by the introduction by the sovereign power at a later date of legislation which admittedly, but for the claim to the earlier exemption, applies to and includes the person who was originally exempted, it follows that by necessary implication the later statute repeals the earlier statute or other Act under which the exemption is claimed.³

Section 10 (2).—Money borrowed by the assessee for the purposes of paying land revenue, etc., is not exempt from income-tax under section 10 (2) (iii).⁴

¹ *The Commissioner of I. T. Bengal v. The Mercantile Bank of India, Ltd. and others*, 1936 I. T. L. J. page 202.

² *Sir T. Vijaya Raghavacharya v. Commissioner of Income-tax Lahore*, 1936 I. T. L. J. page 179.

Rajendra Narain Bhanja Deo v. Commissioner of Income-tax Bihar and Orissa, 1936 I. T. L. J. page 238.

⁴ *H. T. Conville and another v. Commissioner of I. T. Lahore*, 1935 I. T. L. J. page 153.

Sections 25-A, 26.—An Income-tax Officer has no power to decline to review the certificate of registration unless the firm had altered its constitution since the grant of the previous certificate.¹

Under section 25-A the I. T. O. does not enquire into a question of separation or disruption of the family, notional or otherwise; he has to enquire into the question of whether the joint family property has in fact been divided.

Where it is not suggested that the joint family firm existed alongside the partnership firm and there is no evidence that the property of the family had been divided, the I. T. O. is justified in his conclusion that the partnership transaction was not a genuine one.²

Whether in the circumstances of the case there had been an actual separation of the family, or as section 25-A of the Act puts it, a partition of the joint family properties amongst the various members or groups of members in definite proportions, is clearly a question of fact.³

Sections 28, 30 (1).—No penalty can be imposed under section 28 of the Act unless a notice is served on the assessee to show cause against the imposition of such a penalty. The Commissioner in deciding whether the imposition of the penalty by the Assistant Commissioner was illegal cannot re-impose the penalty himself.

Section 30 deals with appeals against assessment, and as soon as the Assistant Commissioner finds that the assessment is validly made under section 23 (4), the proviso to section 30 (1) comes into operation, and it is in pursuance of that proviso that the Assistant Commissioner refuses to admit the appeal. When the Assistant Commissioner refuses to admit the appeal, he cannot thereafter take any action under section 28 (3) by issuing a notice to the assessee regarding penalty.⁴

¹ *Bansi Lal Abirchand v. Commissioner of Income-tax U. P. and C. P.*, 1936 I. T. L. J. page 158.

² *Lachhiram Baldeo Das v. Commissioner of Income-tax Bihar and Orissa*, 1936 I. T. L. J. page 170.

³ *Lachhiram Baldeodas v. Commissioner of Income-tax Bihar and Orissa*, 1936 I. T. L. J. page 179.

⁴ *Banarsi Das v. Commissioner of Income-tax Lahore*, 1936 I. T. L. J. pages 188, 189.

Sections 32 (3), 33, 34.—Where the Income-tax Officer relying upon the accounts submitted by the assessee passes an order of assessment but the Commissioner estimating the income for himself enhances it, the difference in the estimates of income of the Income-tax Officer and Commissioner is the income which has escaped assessment within the meaning of section 34, Income-tax Act, 1922, and the Commissioner is not entitled to enhance the income without issuing notice to the assessee within the period of one year.

The Commissioner, when dealing with the appeal under section 32, can pass orders only with respect to the subject matter of the appeal, and cannot *suo motu* proceed to enhance an assessment which he has the power to do under section 33 of the Act.¹

Sections 42 (1), 43, Income-tax Act and section 45 (g) of Specific Relief Act.—Where certain companies are closely associated and one of the companies registered outside British India leads money at interest to another of the companies registered in British India, the former company is in receipt of profit or gains taxable under sections 42 (1) and 43.

Where an assessment of income-tax is set aside on a reference made to the High Court, the Commissioner cannot impose as a condition of refund of the tax paid that the assessee should undertake to be responsible for paying back the amount in case an assessment were levied again or the matter was taken on appeal to the Privy Council.

Where a payment of a tax assessed has been made under protest and the assessment is set aside by the High Court on a reference made to the High Court under section 66 (3), the money should not be withheld by the income-tax authorities and there is no pretence of justice or law in the notion that the money can be withheld in case on some future date a valid assessment may come into existence.

The Court cannot claim even in appearance to command the Crown, and where an obligation is cast upon the principal the Court cannot enforce it against the servant merely as such. Before mandamus can issue to a public servant it must therefore be shown that a duty towards the applicant has been imposed upon the public servant by statute so that he can be

¹ Nawal Kishore-Khairatilal v. Commissioner of Income-tax Punjab, 1936 I. T. L. J. pages 244 and 245.

charged thereon, and independently of any duty which as servant he may owe to the Crown, his principal.

Orders made under the Specific Relief Act should specify with exactitude and clarity the specific act which the person holding a public office is being commanded to do.¹

Section 48 (2).—

(Corrections made by the Correction Slip No. 2 of 1936)

Page 283.—In the entry "6 Mineral oil concerns" for the item (1) Below ground—"All to be charged to revenue" substitute the following :—

"(1) Below ground... .. 100 "

Page 764.—After item 13 D insert the following :—

"13 E. The interest on securities held by the Kathiawar Education Provident Fund."

After item (16) insert the following :—

"(16-A) The salary of the Italian Trade Commissioner in India, and of any members of his staff who are citizens of Italy and have been detailed for duty with the said Trade Commissioners by the Italian Government."

Page 765.—In item (28) delete the words "or to members of the Indian Police Force or to civil officers serving in a civil capacity with a military Force."

After item (28) insert the following :—

"(20-A) Extraordinary Pensions granted to civil officers (excluding family pensions granted as the result of the death of such an officer) under Chapter XXXVIII of the Civil Service Regulations, or the Army Regulations, India, as the case may be in respect of wounds or injuries received in the performance of their duties."

In item (29) delete the words "or to Civil Officers serving in a civil capacity with a Military force."

¹ The Commissioner of Income-tax Bombay Presidency and Aden and others v. The Bombay Trust Corporation, Limited, 1936 I. T. L. J. 214 and 215.

Page 767.—In item (40) for the first three lines substitute the following :—

“(40) When in any year an assessee has ceased to be an employee participating in a recognised Provident Fund and has been declared by the employer maintaining the Fund hot.”

Page 768.—In item (1) for the words “provided that the face value of the securities so held on account of any one assessee does not exceed Rs. 22,500 ” substitute the following:—

“Provided that the exemption shall apply only to interest on securities so held on account of any one assessee up to a face value of Rs. 22,500.”

Page 769.—Line 5 after (Burma Act VI of 1929), add “ or the Madras Cooperative Societies Act 1932 (Madras Act VI of 1932).”

Page 190.—Delete first sentence of second para “ The Delhi moving allowance.....income-tax.”

Page 205.—For serial No. 16 substitute the following :—

“16 All Government servants are under the audit of the Accountant General, Madras.	Income-tax Officer, 5th circle, Madras.	Assistant Commissioner, Income-tax, Eastern Range, Madras.	Commissioner of Income-tax, Madras.
16-A. All Government servants who are under the audit of the Deputy Accountant General, Posts and Telegraphs, Madras, but do not reside in Burma or the Andaman Islands.	Income-tax Officer, 6th Circle, Madras.	Do.	Do.

Page 207.—After serial No. 19-A insert the following :—

"19-B. Pensioners who draw their pensions from the Hyderabad (Deccan) Treasury and are under the audit of the Accountant General, Central Revenues.	Do.	Do.	Do.
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Page 212.—In serial No. 31 delete "and Orissa."

Page 394.—Add

(VI) for marginal relief in respect of super-tax (see para. 19 I. T. Manual).

Para. 19.—Where, owing to the fact that the total income of an assessee has reached or exceeded a certain limit, he is liable to pay super-tax or to pay super-tax at a higher rate, the amount payable by him on account of income-tax and super-tax 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 on account of income-tax and super-tax 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.

Page 415.—For second para. substitute the following :—

"(x) The position in regard to dividends received by a State from a Company in British India in which it holds shares is entirely different from the position in regard to interest on securities held by a State. Tax on interest on securities deducted under section 18 (3) is paid by the person who deducts it on behalf of the owner of the security; where the owner is a State, it is tax with which the State was not properly chargeable, as a State is not assessable to any income-tax or super-tax except under the Government Trading Taxation Act III of 1926. A refund is therefore admissible under section 48-A of the Act subject to the

time limit prescribed by section 50. On the other hand, the profits of a company are taxed as such and the tax is not paid by the Company on behalf of the shareholders. Any claim by a State to a refund in respect of dividends can only arise not because the income was income in respect of which the State was not *ab initio* chargeable with tax but in virtue of section 48 of the Act."

Page 481.—Para 1 line 2 after Madras High Court add in a case (C. I. T. Mad. v. M. Ar. Ar. Arunachalam Chettiar, 1 I. T. C. 278).

Same para in line 6 for 'it has been decided to accept that decision' substitute "This view has been upheld by the Privy Council in the case of Rm. Ar. Ar. Rm. Arunachalam Chettiar v. the C. I. T. Madras." (P. C. Appeal No. 29 of 1935.)

Page 699.—After item "24-E-Boudh" insert "24-F-Seraikele."

THE INDIA AND BURMA (INCOME-TAX RELIEF) ORDER, 1936.

PART I.

INTRODUCTORY AND GENERAL.

1. This Order may be cited as "The India and Burma (Income-tax Relief) Order, 1936".

2. The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. Any reference in this Order to, or to any provisions of, the Indian Income-tax Act, 1922, shall be construed as a reference to that Act or those provisions as for the time being in force in India, as for the time being in force in Burma or as for the time being in force both in India and in Burma, as the context and the circumstances may require, or, if that Act or those provisions have been repealed and re-enacted, either with or without modifications, to the re-enacting Act or provisions as in force as aforesaid.

4. In this Order, "income-tax" or "tax," in relation to India or Burma, means income tax payable in accordance with the Indian Income-tax Act, 1922, and includes super-tax so payable; and other expressions have, except where the context otherwise requires, the same meanings as in the Indian Income-tax Act, 1922.

5. References in this Order to the rate of tax shall—

- (a) in relation to India or Burma, be construed as references to a rate determined by dividing the amount of income-tax paid in India or Burma, as the case may be, for the year in question (before deduction of any relief granted under section forty-nine of the Indian Income-tax Act, 1922, or under this Order) by the amount of the income on which tax was charged ;
- (b) in relation to the United Kingdom, mean the appropriate rate of United Kingdom income-tax for the year in question as defined for the purposes of section twenty-seven of the Finance Act, 1920.

6. Any reference in this Order to the lower of two rates shall, where the rates are equal, be construed as a reference to either of those rates, and any reference in this Order to the two lowest of three rates shall, where the three rates are equal, be construed as a reference to any two of them, and where two of the three rates are equal and the third is less, be construed as a reference to the lowest rate and one of the equal rates.

7. This Order shall have effect with respect to the financial year beginning on the date of the commencement of Part III of the India Act and every subsequent financial year :

Provided that if, at any time after the expiration of three years from the commencement of Part III of the India Act, the Governor-General of India gives to the Governor of Burma, or the Governor of Burma gives to the Governor-General of India, notice of his desire that this Order shall cease to operate, the Order shall not have effect with respect to any financial year subsequent to the financial year next following that during which the notice is given.

PART II.

RELIEF IN INDIA.

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 for that year Burman income-tax, or Burman income-tax and United Kingdom income-tax, in respect of that part of his income, he shall be entitled to a refund of Indian tax calculated on that part of his income at the appropriate rate of relief.

In this paragraph "appropriate rate of relief" means—

- (a) in relation to income taxed in India and Burma and not in the United Kingdom, a rate bearing to the Indian rate of tax or the Burman rate of tax, whichever is the lower, the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Burman rate of tax;
- (b) in relation to income taxed in India, Burma and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained, relief in the United Kingdom under section twenty-seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Indian rate of tax bears to the sum of the Indian rate of tax and the Burman rate of tax.

2. No refund of tax shall be payable in India under section forty-nine of the Indian Income-tax Act, 1922, in respect of any income which is taxed under that Act in Burma, and if any such refund is made it shall be repaid.

3. Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income-tax.

4. No income which an assessee proves to the satisfaction of the Income-tax Officer to have been charged in his hands to income tax under the Indian Income-tax Act, 1922, for any year preceding the commencement of Part III of the India Act shall be included in India in the assessment of his income for any subsequent year.

5. In the provisions of the Indian Income-tax Act, 1922 (other than the provisions of section forty-nine thereof)—

- (a) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order;
- (b) any reference to section twenty-seven of the Finance Act, 1920, shall be construed as including a reference to Part III of this Order;

- (c) any reference to the United Kingdom in relation to relief under the said section twenty-seven, or in relation to refunds under the said section forty-nine, shall be construed as including a reference to Burma in relation to refunds under Part III of this Order or this Part of this Order, as the case may require.

PART III.

Relief in Burma.

1. If any person who has paid Burman income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid for that year Indian income tax, or Indian income tax and United Kingdom income tax, in respect of that part of his income, he shall be entitled to a refund of Burman tax calculated on that part of his income at the appropriate rate of relief.

In this paragraph "appropriate rate of relief" means—

- (a) in relation to income taxed in Burma and India and not in the United Kingdom, a rate bearing to the Burman rate of tax or the Indian rate of tax, whichever is the lower, the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax ;
- (b) in relation to income taxed in Burma, India and the United Kingdom, a rate bearing to the difference between the total rate at which he was entitled to, and obtained, relief in the United Kingdom under section twenty-seven of the Finance Act, 1920, in respect of that income, and the sum of the two lowest of the three rates of tax the same proportion as the Burman rate of tax bears to the sum of the Burman rate of tax and the Indian rate of tax.

2. No refund of tax shall be payable in Burma under section forty-nine of the Indian Income-tax Act, 1922, in respect of any income which is taxed under that Act in India, and if any such refund is made it shall be repaid.

3. Any sums repayable under the last foregoing paragraph and any sums overpaid by way of refund under this Part of this Order shall be recoverable as if they were arrears of income tax.

4. No income which an assessee proves to the satisfaction of the Income-tax Officer to have been charged in his hands to income-tax under the Indian Income-tax Act, 1922, for any year preceding the commencement of the Burma Act, shall be included in Burma in the assessment of his income for any subsequent year.

5. In the provisions of the Indian Income-tax Act, 1922 (other than the provisions of section forty-nine thereof)—

- (a) any reference to that Act or to section forty-nine thereof shall be construed as including a reference to this Part of this Order ;
 - (b) any reference to section twenty-seven of the Finance Act, 1920, shall be construed as including a reference to Part II of this Order ;
 - (c) any reference to the United Kingdom, in relation to relief under the said section twenty-seven or in relation to a refund under the said section forty-nine, shall be construed as including a reference to India in relation to refunds under Part II of this Order or this Part of this Order, as the case may require.
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ERRATA

- Page (iii) Preface 2nd para—penultimate line 1, read “found” between “is” and “helpful.”
- „ 26 Para 2, line 2, for “Gleatlagi” read “Ghatlagi.”
- „ 44 Delete last two paras.
- „ 45 „ first para.
- „ 48 At the end of first para for “paragraph 64” read page 306.
- „ 49 In middle of 2nd para between “Agricultural land” and interest read “from.”
- „ 49 Read “is” for “or” after interest above.
- „ 53 Under heading “sporting rights etc.” for “ears” read mares.
- „ 70 Delete last para.
- „ 71 Delete from “There can be no objection etc.....to the end of the first para.
- „ 71 Delete last para.
- „ 84 Read “treatises” for “treaties.”
- „ 90 Second line from top, read “Income-tax Officer” for “I. T. C.”
- „ 102 Read Rs. 2,000 for Rs. 1,000 in middle of second para.
- „ 105 In second line from bottom read “that” between “held” and “they.”
- „ 107 In second para read rule 2 Section 26 (A) for rule 266.
- „ 112 At the end of second para add “But see page 507 infra.”
- „ 135 At the end of 1st para add the sentence “But see notes under section 9 (1) (iv) page 245 infra.”
- „ 137 2nd para last line for “and the individual” read “and the company.”
- „ 145 Top line, for “otherwise” read “Hereinafter.”
- „ 154 At the end of 2nd para add the words “is not received in British India.”
- „ 276 Under heading Plant for “rolling dock,” read “rolling stock.”
- „ 313 In 3rd para, 4th line read “debit” for “debt.”
- „ 332 Under heading “Bad debts” in 3rd line read “unrealisable” for “unreliable.”
- „ 370 In 3rd line from top read “inability” for “liability.”
- „ 392 Last column, against Rs. 4999 read Rs. 182-5 for Rs. 195-5.
- „ 449 In 4th line of 2nd para read 23 (2) for 22 (2).

- Page 464 Under heading "Waiver of notice under section 23 (3) read 23 (2).
- „ 476 Add "by" after dealings in line 10 from top.
 - „ 505 Last line for "an" read "No."
 - „ 505 After the last word "competent" add "but see page 520 first para last three lines."
 - „ 552 Delete heading "Court fees " and the two lines under it.
 - „ 624 Second para, 3rd line, read "therefor" for "therefore."
 - „ 631 P. C. ruling.
 - „ 638 First line, read 22 (2) for 22 (1).
 - „ 704 Middle of the page for "section 49 was added.....of 1934, read "In section 49 the words 'or the appropriate rate of United Kingdom income-tax, whichever is less' were added....., 1934."
 - „ 769 In penultimate line read section 25 for section 45.
 - „ 772 In last line delete "and."
 - „ 839 At the end of 4th para after "the said High Court" add "remarked."
 - „ 839 Place inverted commas before the word "Since, in last para and after, power."
 - „ 842 Last para in 4th line from bottom read 23 (3) for 23 (4).

TOPICAL INTRODUCTION

Income-tax, as the term signifies, is a tax on income. What is taxed is income and not capital or wealth. The law does not contemplate taxing wealth, but at securing to the state a share of the yield or that which comes in. The Income-tax Act does not give any definition of income, and presumably leaves it to be determined according to the meaning of the word ordinarily accepted among the class of persons liable to be taxed. Economists have been at pains to define the exact denotation of capital and income, but none has succeeded so far. The word income broadly speaking connotes the idea of coming in the earnings of capital.

Income-tax is a direct tax. Direct taxation was not unknown in pre-British times, and the Indian mind was not averse to non-agriculturists contributing their quota towards the expenses of the state. With the advent of British Rule indigenous methods of taxation were abandoned. But circumstances forced the British Government to resort to direct taxation in 1860 when the taxable income was fixed at Rs. 200. Act XXI of 1861 and 1862, exempted income below Rs. 500 from tax, and tax was levied at 4 per cent. In 1863 the rate of the tax was reduced to 3 per cent. In 1867 the maximum taxable income was again lowered to Rs. 200, and the rate of tax was reduced to 2 per cent. In 1868, the taxable income was again raised to Rs. 500, and in 1869 all incomes over Rs. 500 were taxed at Re. 1 per cent, but the rate was doubled in the middle of the year. In 1870, the rate of tax was raised to 3½ per cent. with a

maximum of Rs. 750. In 1872 the maximum taxable income was raised to Rs. 1,000. In 1872 income-tax was totally abolished. From 1877 to 1878 a series of Acts was passed, so much that between 1860 and 1886 twenty Acts saw the light of the day. The Act of 1886 is given in extenso in an appendix to this book. Acts passed before 1886 have hardly more than a historical interest.

From the perusal of the Act of 1886, it would appear that the income of an assessee for the purposes of income-tax was divided into four classes : (1) salaries, (2) interest on securities, (3) profits of joint-stock companies, (4) other sources. Agricultural income was then as at present exempt from income-tax. Except in the Presidency Towns there were no wholetime income-tax officers, and the work of income-tax was done by Revenue officers in addition to their duties as such. The class "other sources" was vague and formed the most important class of income. The Collector made a summary assessment in case of people who were regarded to have an income of over Rs. 2,000 and a list of such assesseees was published at the Collector's office. Any one affected thereby had a right to object to the assessment or to the amount of tax within 60 days of the publication of the list failing which, the list became final. There was no provision for secrecy like the one contained in section 54 of the Income-tax Act of 1922. Evidence could be called only to verify facts alleged by an assessee objecting to the list published by the Collector. This crude method of assessment worked well so long as the incidence of taxation was low. But the Great War necessitated an increase in the rate of income-tax and a consequent revision of the machinery of taxation. In 1917 therefore it was made obligatory on persons with an income of Rs. 2,000 and over, to file returns of their incomes. Provision for the levy of

super-tax was also made in 1917 which was imposed on income of over Rs. 30,000. The income-tax law was subsequently amended by the Act of 1918, which is also given in extenso in the appendix. With the experience of the working of the Income-tax Law, an overhauling of the law was deemed desirable. Committees were appointed in each province to examine the working of the Act, and make recommendations for amendment. When the recommendations of these committees were received, a central committee of the Government of India was appointed in 1921, and the present Act XI was the result of its recommendations.

In 1931 incomes between Rs. 1,000 and Rs. 2,000 were also made taxable and this lower limit tax continued till 1936 when it was abolished and the limit of taxable income was once again raised to Rs. 2,000 per annum.

Several amendments were made to the Act of 1922 by the various Amending Acts passed from time to time. These amending Acts have been noted at appropriate places. In 1919 it was found that as a result of the Great War, some traders had made abnormal profits, due to specially favourable conditions for making such profits in India. The excess profits Duty Act was therefore passed in 1919 and it taxed such incomes in the year 1919-20. It was in force for one year only. This Act is quoted in the appendix.

The present Act only provides the machinery of taxation. The liability to tax as well as the rate at which income-tax is to be levied is fixed year after year by the Finance Act which is passed at the beginning of each year and which confers on the Government the right to levy income-tax.

It would appear that the Income-tax Act is not very happily worded and that several important terms have not been used in same sense in the various sections in which they occur. For instance the word "assessee" is defined by section 2 (2) as a person by whom income-tax is payable. The word assessee occurs in sections 23 (1), 23 (3), 27, 28, 29, 30, 33, 42 (1), and other sections. If the definition of the word as given in section 2 (2) were to be adhered to in all subsequent sections, no one would be an assessee unless he is actually assessed to income-tax, and as such a person assessed at "nil" will have no right of appeal, while section 30 expressly confers that right. Again the definition in section 2 clearly implies that the word does not include a living person and without doing considerable violence to the language of that section, it cannot be said that the heir of a deceased assessee is entitled to present an application under section 27. Under section 29 an Income-tax Officer is to serve a notice of demand on the assessee as soon as he has determined the amount of tax payable by him under section 23, or section 25, or has imposed a penalty under section 28. As remarked by Beamont, J., the privilege of immortality, not having been conferred by the Income-tax Act, the word assessee in the latter part of section 29 must refer to heirs or executors and administrators of a deceased person, who dies during the time that the assessment is made and the notice of demand is issued, and yet section 29 does not expressly say so. The addition of section 24 B has provided for the making of the heirs and executors and administrators of deceased person liable for the payment of income-tax and has therefore widened the meaning of the word assessee, by making it include not only the person by whom income-tax is payable, but also his heirs etc.

Similarly the word property, which according to the definition given in section 9 includes only house property, but for the purposes of section 25 it must include other items of property. Again in section 4 (3) the word property has been used to include interest on securities or a business or a share in business.

Over and above these anomalies, the income-tax law is particularly hard to Joint Hindu Families. By adopting a Joint Hindu Family as a unit for the purposes of assessment of tax, in many cases tax is levied on persons who would otherwise not be liable to tax if they were taxed as individuals. Probably with this hardship in view, super-tax is levied in case of Joint Hindu Families on incomes of over Rs. 75,000 as against Rs. 30,000 on which individuals are liable to be assessed to super-tax.

It is sometimes thought that the Income-tax Law is based on English Law of Income-tax. In one sense all statute law in India is inspired either by English statute law or at least by the principles of English common law with which high officials on whom it lay to legislate for India, were conversant, and to which they naturally looked for inspiration and guidance. But the matter ends when this much is said. Indian Income-tax Law, though it has been inspired by English Law, is yet much simpler in its application and differs from the latter in many respects so that it forms a separate corpus, but it may be of some interest to contrast the two systems on salient points.

In England even agricultural income is liable to income-tax, while it is exempt from such tax in India, and some people think that the example of English Law should be followed in India in this respect. But it is forgotten that in

India unlike England agricultural income is liable to land revenue which is sufficiently high in many places and it would be obviously unfair to add to an already taxed income, an additional burden to the form of income-tax.

In England there are numerous allowances, viz., old age and personal allowance for self, family and dependents, on account of which the taxable minimum is raised to a much higher figure than the limit fixed as taxable in India. In England business losses are allowed to be set off against available profits and are carried forward like depreciation allowances permissible under the Indian Income-tax Act. An assessee can claim a refund of tax within 6 years if by a mistake in his return or accounts he has paid a greater amount of tax than could be properly charged from him. But the incomes escaping assessment can be taxed within 6 years of the year of assessment.

Another important difference between the two systems relates to the procedure of assessment. The Crown represented by the Commissioners of Inland Revenue is only the taxing authority, while appeals against assessment of tax are heard by judicial tribunals before whom both the assessee and the Income-tax Department are represented. The Crown is thus on an equal footing with the assessee so far as the determination of tax is concerned.

Tax is assessed through a non-official agency called the General Commissioners to whom the Inspector of Income-tax makes proposal for assessment. Against the orders of General Commissioner, both the assessee and the Crown can file an appeal. In India non-officials are not associated with Income-tax proceedings except to the limited extent as Board of Referees under section 33 A. Income-tax Officers are in

India not only the taxing authorities, but are judges also of all questions of law and fact that may arise. The High Courts have a limited jurisdiction to advise on points of law.

It would seem that though the incidence of tax is higher in England than it is in India the various allowances and the right of reference and appeal to outside agencies make the tax less irksome.

**THE
INDIAN INCOME-TAX ACT (XI OF 1922)**

AS SUBSEQUENTLY AMENDED

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

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

PREAMBLE

Consolidate and amend.—The Act of 1922 is a consolidating Act. The object of consolidation is to collect the statutory law bearing upon a particular subject and to bring it down up to date in order that it may form a useful code applicable to the circumstances existing at the time when the consolidating Act was passed.¹ The Law is therefore to be ascertained by interpreting the language used in the statute in its natural meaning uninfluenced by considerations derived from the previous state of the law.²

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 Santhal Parganas, and applies also, within the domains of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those

¹ The Administrator General v. Premlal Mullick (1895) 22 Cal. 788.

² Roger Pratt Shelloc Co. v. Secretary of State, A. I. R. 1925 Cal. 34.

dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor-General in Council in that behalf, and to all other servants of His Majesty in those dominions.

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

NOTES AND INSTRUCTIONS REGARDING THE INCOME TAX LAW AND RULE

1. **Extent of the Act (Section 1 (2)).**—This sub-section governs the whole of the Act and defines the areas to which the Act applies. Section 7 (2) on the other hand governs merely the taxation of particular classes of income.

The words "and to all other servants of His Majesty in those dominions" were added in the Act of 1918 as it was considered advisable to abandon the previous limitation, in the case of persons serving outside British India, of liability to British subjects, since it not infrequently happens that subjects of Indian States are taken into Government employment and sent to serve in places outside British India.

The words "including British Baluchistan" were inserted in the Act of 1922. Prior to the passing of that Act, the Income-Tax Act was applied to British Baluchistan by notification in a restricted form, income-tax being, under the notification, leviable only upon salaries received by persons in the service of, and paid by or on behalf of, Government or of a local authority established in the exercise of the powers of the Governor-General in Council. The Act now applies in full force to the whole of British Baluchistan,

The whole of the Act, with the exception of sections 7 (2) and 64, has been applied to the Civil and Military Station, Bangalore, and the District of Abu, while to Berar the whole Act except section 7 (2) has been applied. Only so much of the Act has been applied to the Cantonment of Baroda, the British administered areas in Central India and the British administered areas (excluding Railway lands) in the Bombay Presidency, as relates to the assessment and collection of income-tax on salaries of Government servants or of local authorities established in the exercise of the powers of the Governor-General in Council.

The Civil and Military Station of Bangalore, Berar and the District of Abu are distinct from British India and, strictly speaking, all profits accruing or arising or received in British India or deemed to accrue or arise or to be received in British India are liable to tax even if they have already been taxed in those areas. Similarly, all profits accruing or arising or received in any of those areas or deemed to accrue or arise or to be received in those areas are liable to tax even if they have already been taxed in British India. Berar is practically treated as part of British India for purposes of assessment and no question of double taxation arises. When the same profits are taxed both in British India and in the Civil and Military Station of Bangalore, a deduction or refund is given in British India equal to the tax levied on such profits in the Civil and Military Station if the headquarters of the firm or company, etc., are in British India, and a similar refund or deduction is given at Bangalore if the headquarters of the firm or company are at Bangalore. The whole of the Act has also been applied to Angul, but under a notification issued under section 60 of the Act, the income of persons in that District other than persons in the service of Government has been exempted from liability to the tax.¹

Under the subsection—

- (a) the Act applies in Indian States to all persons in the service of Government, whatever their nationality. It applies in Indian States to persons in the service of a local authority

¹ See paragraph 17 (34) I. T. Manual.

established in the exercise of the powers of the Governor-General in Council, only if they are British subjects or servants of Government lent to the local authority.

(b) the salaries of Government officers serving outside India are not liable to income-tax unless they are drawn or otherwise received in India.

(c) Frontier Agency tracts and ceded areas are included in the term "dominions of Princes and Chiefs in India in Alliance with His Majesty."¹

British India.—The term British India is not defined in this Act. The definition of the term is therefore to be taken from the General Clauses Act X of 1897. Sec. 3, cl. (7) of General Clauses Act defines British India as "all territories and places within His Majesty's dominions which are, for the time being governed by His Majesty through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India."

"Aden² and British Burma, which are governed through Governors or other officers subordinate to the Governor-General of India" are therefore within British India. Native States in India, lands ceded by Native Princes to British Government for some specific purposes, while retaining their sovereign rights in such land, e.g., lands, ceded for Railway purposes,³ for civil stations and for the construction of cantonments,⁴ and territories specially excluded from the limits of British India, are not British India.

¹ Income Tax Manual, 6th edition, para 1, pages 141-142.

² Aden Laws and Regulations of 1891, Sec. (2).

³ *Md. Yusufuddin v. Queen Empress*, E. C.—W. N. 1 Act 9.

⁴ *Babu v. Parwati*, 6 I. C. 429. *Zabeda Begum Sababa v. Komara Kanniah*, 1925 Mad. 1100; *Emperor v. Chunanlal*, 17 I. C. 534.

The cantonments of Wadham,¹ and Secunderabad² and Singapore³ are not British India. But where a new territory is conquered or ceded, it will form part of British India.⁴

British Subjects.—A British subject is a natural born British subject, or a person to whom a certificate of naturalisation has been granted or a person who has become a subject of His Majesty by reason of annexation of any territory.⁵

Local Authority—means a Municipal Committee, District Board, Body of Port Commissioners or other authority, legally entitled or entrusted by the Government with the control of management of a Municipal or local fund.

Interpretation of the Act: General.—The cardinal principle of interpretation of statutes is, that the intention of the legislature should be gathered from the language used by it.⁶

The function of a court is to find out the meaning of the legislature from the plain meaning of the words used, and not to say as to what the legislature ought to have meant.⁷

¹ Emperor v. Chunanlal, 37 Bom. 152.

² Hossain Ali v. Abid Ali Miza, 24 Cal. 177 and 129.

³ Strait Settlements Act, Sec. 11.

⁴ Jalbbai Ardeshir v. Louis Manuel, 19 Bom. 680.

⁵ British Nationality and status of Aliens Act 1924, Section 23.

⁶ Doorga Charan v. Nittokally, 5 Cal. 819 at 820; Rash Behari v. Bhawani Charan, 34 Cal. 97 at 99; Maxwell on the Interpretation of Statutes, page 4; A. I. R. 1930 Bom. 597; Secretary of State v. Vacuum Oil Co.

⁷ Lala Suriya v. Gopal Chand, 27 Cal. 724 at 725; A. I. R. 1933 Cal. 919; A. I. R. 1931 and ab 578 O. B.; A. I. R. 1932 Mad. 8; A. I. R. 1931. In re Rameshwar Singh of Darbhanga, A. I. R. 1934 Pat. 178; Hungerford Investment Trust, Ltd. v. Commissioner of I. T. Bengal, 1934 I. T. L. J. p age 187.

When the words of an enactment are clear and imperative, considerations of inconvenience or hardship have no place in its application to circumstances falling within the words.¹

It is the duty of courts to enforce the law as they find it, and they cannot allow their decision to be influenced by considerations of hardship etc.²

When two constructions are possible, a statute should be so constructed as to best harmonise with other provisions and avoid inconsistency of meaning.³ The context and the purpose of the Act must be looked into, to explain an ambiguity.⁴ When similar words are used in two different sections of the same Act, the legislature will be presumed to have used the words in the two sections in the same sense,

¹ Gulam Md. Ali v. Corporation of Madras, A. I. R. 1930 Mad. 200; 57 M. L. J. 536; Omai Tyab v. Ismail Tyab, A. I. R. 1928 Bom. 69; 30 B. L. R. 177; P. P. P. I. Chetty Firm v. 9, Lon Pow, A. I. R. 1923 Railway 103; Sodawater Wala v. Messrs. Ylkart Bros., A. I. R. 1923 Sind 25; 82 I. C. 81; A. I. R. 1932 Mad. 612 P. B.; A. I. R. 1933 Oud. G. 528; A. I. R. 1932; Oud. G. 314; A. I. R. 1933 Pat. 508.

² Duni Chand v. Commissioner of Income Tax, A. I. R. 1929 ab 593 F. B.; 10L. 596; In re Bijoy Singh, A. I. R. 1933 Cal. 641; 1933 A. L. J. 1203; A. I. R. 1933 All. 789 F. B.; A. I. R. 1933 Cal. 124; 143 I. C. 802; A. I. R. 1931 Cal. 688; Secretary of State v. Vacuum Oil Co, A. I. R. 1930 Bom. 597.

³ Mani Mohan v. Ramratan, 43 Cal. 148; Ghaznavi v. Allahabad Bank, 41 I. C. 598; Khan Gul v. Lakhan Singh, A. I. R. 1928 Lah. 609 P. B.; Haji Dost Mohammad v. Mohandas Lal Chand, A. I. R. 1926 Sind 81; A. L. R. 1934 C. 37.

⁴ A. I. R. 1931 All. 767; 1931 A. L. J. 983; A. I. R. 1931 All. P. B.; A. L. J. 1911, 122.

unless there be something in the context to indicate the contrary.¹

The same meaning should be given to same word in different parts of an enactment.²

Not only should the language of a section of a statute be so construed as to harmonize with the words of other sections, but the language of every enactment must be so construed, so far as possible, as to be consistent with every other enactment which it does not in express term modify or repeal.³

An interpretation should be put which would prevent abuse of process of law, and the courts would adopt a construction which seems to produce a beneficent result.⁴

¹ Balbhadar Singh v. Lakshmi Bai, A. I. R. 1930 All. 669; 1930 A. L. J. 623.

² Riaz-ud-din v. Musammat Phula Devi, A. I. R. 1929; 977 F. B. 1929 A. L. J. 1212; Khan Gul v. Hakba Singh, A. I. R. 1928 Lah. 609 F. B.; Harikishan Das v. Bai Dhanu, A. I. R. 1926 Bom. 497; Ratansi Herji v. Emperor, A. I. R. 1929 Bom. 274; Emperor v. Jiand, A. I. R. 1928 Sind 149 F. B.; Sikander Khan v. Balaud Khan, A. I. R. 1927 Lah. 435; Kalika Pershad v. Ajodhya Pershad, A. I. R. 1929 All. 421; A. I. R. 1931 Lah. 476; A. I. R. 1932 Mad. 391 F. B.; Sanbamur hi Ayyer v. Ramakrishna Ayyar, A. I. R. 1929 Mad. 48; Ratanafi Kasretji v. Narain Das Pryag Das, A. I. R. 1927 Bom. 474; Maing Thave v. A. L. A. R. Chetty Firm, A. I. R. 1928 Rang. 71.

³ Ratansi Mirji v. Emperor, A. I. R. 1929 Bom. 274; Khan Gul v. Lakhasingh, A. I. R. 1928 Lah. 609 F. B.

⁴ A. I. R. 1930 All. 265 P. B.; Emperor v. Himanchal Singh; Secretary of State v. Vacuum Oil Co., A. I. R. 1930 Bom. 597; Des Ram v. Emperor, A. I. R. 1930 Sind 265 F. B.; Mansa Singh v. Emperor, A. I. R. 1929 All. 250; Vankatanasyija v. Official Receiver Godavari, A. I. R. 1929 Mad. 826; 104 I. A. 177; Aruna Charan Chetty v. David Esq. The Official

The words of a statute should be so interpreted as to further the object which the legislature has professed in framing the statute.¹ But the intention of the legislature is to be judged from the language used.²

In India, however, no equitable construction of a statute is permitted to override the clear terms of an Act. Statute prevails against equity however wholesome the latter may be.³

Nor can the statute be circumvented by estoppel. Where a particular Act is declared void and unlawful by statute, a party cannot by representation any more than by other means, raise against himself an estoppel so as to create a state of things which he is under a legal disability from creating.⁴

It is a settled principle that there is no estoppel against the Crown. Where an inspector of taxes omits from the

Receiver Ramad Dist., A. I. R. 1927 Mad. 165 ; 99 I. C. 284 ; Haji Dost Mohammad v. Mohan Das Lal Chand, A. I. R. 1926 Sind 81 ; 91 I. C. 573 ; Mubarik Husain v. Ahmad, A. I. R. 1924 All. 328 F. B. ; Secretary of State v. Raj Kumar Mukherji, A. I. R. 1923 Cal. 585 ; East Indian Railway Co. v. Dayabai Vanmalidas, A. I. R. 1922 Bom. 416.

¹ Molla Ataul v. Chairman of Maniktola, 1921 Cal. 85 at 86 ; 48 Cal. 378 ; Halimbhai v. Famiroz Edulgee, A. O. R. 1927 Bom. 278 F. B. ; 104 I. C. 8 ; A. I. R. 1933 All. 846 ; A. I. R. 1932 All. 110 ; A. I. R. 1931 All. 707 ; A. I. R. 1933 Bom. 272 ; A. I. R. 1933 Nag. F. B. ; page 193 P. B. ; A. I. R. 1932 Oudh 210 F. B. ; 152 P. B.

² A. I. R. 1931 Rang. p. 95, 177.

³ A. I. R. 1931 All. 277 F. B. ; A. I. R. 1931 All. 380 ; A. I. R. 1931 All. 307 ; Nanneen v. Kalka, A. I. R. 1930 All. 175 ; Lilaram v. Tikam Das, A. I. R. 1929 Sind 226 ; Nagabhushanam v. Ramchauder Rao, A. I. R. 1923 Mad. 241.

Khan Gul v. Rabha Singh, A I R 1928 Lgh 609 F. B.

assessment income which he along with the assessee, supposes to be income not chargeable to tax, he can subsequently change his opinion and make an assessment upon such income.¹

The law is presumed to permit everything, and unless an Act is expressly prohibited, it shall be taken as permissible.²

In case of a consolidating statute, like the Income-tax Act, the statute must itself be consulted in order to find the authority on the alleged prohibition.³

Words derogatory to the rights of the subjects must be strictly construed.⁴

Fiscal Statutes.—A statute like the Income-tax Act, if it is doubtful or difficult of interpretation, is subject to the rule that no tax should be imposed except by words which

¹ Williams v. Trustees of W. W. Grundy (K. B.), 1934 I. T. L. J. page 230.

² Mohammad Sulaiman v. Mohammad Yarkhan, 11 All. 267 at 287; 13 Ind. Jur. 427 F. B.; 1882 A. W. N. 202 F. B.

³ Mohammad Sulaiman v. Mohammad Yarkhan, 11 All. 267 at 288; 1889 A. W. N. 55; 13 Ind. Jur. 427 F. B.

⁴ Sinatee Bazar Co. v. Rangoon Municipality, 1928 Rang. 87 at 94; Ajodhya Pershad v. Balmakund, 5 All. 354 at 361; 1886 A. W. N. 110 F. B.; Famidunnisa v. Secretary of State, 14 Cal. 67 F. B.; Queen Empress v. Ganga Ram Daya Ram, 14 Bom. 331 at 352; A commonwealth v. Hazedell, 1921 P. C., page 224 at 227; The Zamindar Bank Shekhupure v. Suba, 1924 Lah. 418 at 419; Inglewood Pulp and Paper Co. Ltd. v. Bounswick Electric Power Commission, 1928 P. C. 287 at 290; Bakhtawai v. Balwant, 1927 All. 599 at 600; Inami v. Emperor, 35 All. 24 at 28; 10 A. L. J. 426.

are clear, and benefit of doubt should in every case be given to the subject.¹

Where two interpretations are possible to the words of a statute, the one which is in favour of the subject is to be adopted. The maxim that clear words are necessary in order to tax the subject, does not however mean that the words are to be unduly restricted against the taxing authorities. It simply means that in a taxing statute, liability must be clearly expressed in unambiguous words. There is no equity about a tax. There is no presumption as to tax.² No equitable construction is permissible in a taxing statute, where the actual words used have to be interpreted.³

Taxing statutes should be strictly construed, and the right to tax should be strictly and clearly established. Conditions precedent to the imposition of a tax, should be

¹ Kameshwar Singh, A. I. R. 1934 Patna 178; Vulcun Inowance Co. v. Corporation of Madras, A. I. R. 1930 Mad. 626; A. I. R. 1932 All. 526, 1932 A. L. J. 149; A. I. R. 1931 Cal. 193 F. B.; A. I. R. 1933 Mad. 748; A. I. R. 1932 Mad. 325; A. I. R. 1931 Mad. 683; A. I. R. 1931 Nag. 156 (S.B.); Commissioner of Income Tax Madras v. Ramaswami Chettiar, A. I. R. 1929 Mad. 60 F. B.; Khasi Ram Karam Chand v. Commissioner of Income Tax Punjab; A. I. R. 1928 Lah. 219; Madura Devasthanam v. Madura Municipality, A. I. R. 1928 Mad. 569.

² Best & Co., Ltd. v. Corporation of Madras, A. I. R. 1924 Mad. 420 F. B.; Jai Dayal v. Commissioner of I. T., 7 I. T. L. J. page 88, 6 I. T. C. 226.

³ Sunder Das v. K. Emperor, A. I. R. 1929 Lah. 14 F. B.; Jagannath Sahai v. Emperor, A. I. R. 1922 U. B. 14; Rowe & Co. v. Secretary of State, A. I. R. 1920 L. B. 30; A. I. R. 1932 Mad. 474; A. I. R. 1932 Mad. 325; A. I. R. 1932 Sind 189; A Bijai Singh Dudhuria, in re A. I. R. 1930 Cal.; S. Ramantha Reddiar v. Commissioner of Income Tax, A. I. R. 1928 Rang. 152.

strictly complied with.¹ Technicalities in a fiscal statute should be strained in favour of the subject, if they are to be strained at all, and not against him.² But when a particular case comes clearly within the words of the law no consideration of equity or hardship should be allowed to stand in the way of the imposition of the tax.³

General and Special Provisions.—Of the two general statutes the later one repeals the earlier. But if the later Act is a general Act and the earlier Act a special one, the earlier Act is generally not repealed by the later Act.⁴

In case of general and special Acts, it will not be taken that the general Act repeals the special Act, if the two can be reconciled.⁵

A general Act is to be so construed as not to repeal a particular one, that is one directed towards a special object.⁶

¹ Vasudeva Rao v. Municipal Council Anantpure, A. I. R. 1930 Mad. 344; Commissioner of Income Tax v. Dharamchand Dalchand of Saneer, A. I. R. 1924 Nag. 24; 5 I. T. C. page 100.

² Balkishen Natham v. Commissioner of Income Tax, A. I. R. 1924 Nag. 153; Moti Singh v. Harbhojan Singh, A. I. R. 1927 Lah. 635; Arunachalam v. Commissioner of Income Tax, A. I. R. 1929 Mad. 769 F. B.; Chunalal v. Sheocharan, A. I. R. 1925 All. 787.

³ Deputy Commissioner Singhbhum v. Jagadish Chander Deo Dharal Deo, A. I. R. 1921 Pat. 206.

⁴ Jhammaiya v. Sri Raja Dingaraj Babadur Garu, A. I. R. 1930 Mad. 963.

⁵ Hasan Imam v. Biahmdeo Singh, A. I. R. 1930 Pat. 301.

⁶ Gola v. Emperor, A. I. R. 1929 Nag. F. B.; Ramnath v. Hazarilal, A. I. R. 1929 Nag. 248; Chettiar Y. E. A. Firm v. Commissioner of Income Tax, A. I. R. 1930 Rang. 37.

But where a special enactment deals with a particular thing or class of things, the general enactment, though it may cover the facts of the case, is yet excluded from operation by reason of the particular enactment.¹

Where two Acts are inconsistent, or repugnant, the latest expression of the will of the legislature must prevail.²

General words used in a later Act do not take away the privileges conferred specially by earlier Acts.³

A special Act governs the rights of parties whose cases are governed by it, and unless a general Act specially repeals such special Act, its provisions cannot be held to override those of the former.⁴

Similarly, when there are two provisions, one specific and the other general, the specific provision ought to be applied in preference to a general one.⁵

¹ Koka Ram v. Salig, A. I. R. 1928 All. 535; A. I. R. 1931 Mad. 152; A. I. R. 1932 P. C. 252; A. I. R. 1932 Oudh 199 F. B.; Jageon Dhamk v. Emperor, A. I. R. 1926 Pat. 232.

² King Emperor v. Rajah Probhat Chandra, A. I. R. 1927 Cal. 432 F. B.

³ Emperor v. Indu Bbushan Sarkar, A. I. R. 1926 Cal. 819.

⁴ Municipality of Karachi v. Karachi Electric Supply Corporation Ltd., A. I. R. 1926 Sind 115; In the matter of J. A. Chidambara Chetty, A. I. R. 1922 Mad. 143; Sinha Singh v. Suder Singh, A. I. R. 1921 Lah. 280.

⁵ Ram Nath v. Emperor, A. I. R. 1925 All. 230 F. B.; Jivandas Savchand in re A. I. R. 1930 Bom. 490 F. B.; Ko Maung Gya v. Dane Lok, A. I. R. 1928 Rang. 249; Mutji Tribhavan Sevak v. Dakor Municipality, A. I. R. 1922 Bom. 247 F. B.; G. S. Fernandez v. Emperor, A. I. R. 1921 Bom. 374.

Where two co-ordinate sections are apparently inconsistent, an effort must be made to reconcile them. If this is impossible, the latter will generally override the earlier, but a particular enactment whenever found, must be construed strictly against a general provision.¹

Mandatory and Directory Provisions.—The intention of the legislature should be construed as mandatory if the aim and object of the statute, would be clearly defeated if the direction to do a particular thing in a particular manner is not strictly observed. But where the violation of any special provision does not defeat the object of the particular enactment, the same is said to be directory.²

In I. L. R. 3 Cal. at page 47, their Lordships of the Privy Council, even held that there is no doubt that in some cases, the word "must" or the word "shall" be substituted for the word "may," but that can be done only for the purpose of giving effect to the intention of the legislature. The real test to decide, whether a provision is directory or mandatory is not by merely judging from the words used, but from the effect, the non-compliance of the enactment would have.³

Change in the Language of Law.—A change in the language of the Act may be presumed to indicate a change in the intention of the legislature.⁴

¹ Amarchand Roy v. Prasanna Dasi, A. I. R. 1921 Cal. 603.

² District Board Kheri and another v. Abdul Majid and another, A. I. R. 1930 Oudh 434 ; Hira Lal Ghose v. Emperor, 1924 Cal. 889; Valliappa Chettea v. Subiamania Chetty, 39 Mad. 485.

³ Secretary of State v. Raja Parthasrathy, A. I. R. 1926 Mad. 706; Nathu Mal v. Malawa Mal, 122 I. C. 561; Government of Burma v. Municipal Corporation of the City of Rangoon, A. I. R. 1930 Rang. 297 F. B.

⁴ Farid v. Piru, 28 I. C. 105.

But it is also a recognized principle of interpretation, that no change in law is intended beyond what is expressly declared, and where no change is expressly declared, no change in law will be deemed to have been made.¹

Declaratory or explanatory Acts are retrospective in their operation. Whether an act is declaratory or not, may be inferred from the effect that it is intended to have. Though the Act is not a declaratory or explanatory Act, if from the language used, the court can come to the conclusion that it is declaratory or explanatory, retrospective effect will be given to such Act.²

Amending Act.—An amending Act is not retrospective.³

Preamble.—When the meaning of an enactment is clear and unambiguous its scope cannot be affected by the preamble.⁴

But in case of ambiguity, the preamble may be used as a key to the interpretation of the substantive provisions of the Act.⁵

¹ *Gadiji Marappa v. Firm of Marwadi*, 38 I. C. 823 at 826; 31 M., 772, *Magsaw v. Maw Bwin Bya*, A. I. R. 1926 Rang. 129; *Kothanandrma Chettiar v. Annambalai Pillai*, A. I. R. 1925 Mad. 589.

² *Balaji Singh v. Chukha Gangamina*, A. I. R. 1927 Mad. 88 F. B.

³ A. I. R. 1931 Cal. 100; A. I. R. 1932 Rang. 197; *Nogendra Nath Bose v. Mon Mohan Singh*, 34 C. W. N. 1009; *Phool Chand v. Ram Nath*, 26 A. L. J. 142, A. I. R. 1928 All. 186.

⁴ *Ghulam Mohammad v. Allah Ditta*, 122 I. C., 226; *Nehra v. Sajir Pramanik*, A. I. R. 1927 Cal. 763; A. I. R. 1933 Mad. 220; A. I. R. 1931 Mad. 629; *Altaf Ali v. Jainoor Ali*, 1926 Cal. 638 at 639; 22 A. L. J. 787 at 789; 18 A. L. J.; 43 Mad. 529 P. C.

⁵ A. I. R. 1932 All. 617; A. I. R. 1931 Lah. 706; A. I. R. 1931 Mad. 629; *Rajmal v. Harnam Singh*, A. I. R. 1928 Lahore 35; *Debi Das v. Rupchand*, A. I. R. 1927 All. 593; *Nehra v. Sajir Pramanik*, A. I. R. 1927 Cal. 763.

Headings.—A heading prefixed to a section has the force of a preamble and the words used as heading may be used as a key to open the minds of the makers of the Act.¹

Though a heading is meant to express the intention of the legislature, the words themselves have no operative effect,² and they cannot be taken to govern the clear intention of the legislature as expressed in the section.³

Marginal notes to sections.—In *Balraj Kunwar v. Jagatpal Singh*, their Lordships of the Privy Council observed that it is well settled that the marginal notes to the sections of an Act of Parliament cannot be referred to, for the purpose of construing the Act. The contrary opinion expressed originally is a mistake, and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament.⁴ The marginal notes to sections do not form part of the statute itself,

¹ *Devidas v. Rupchand*, A. I. R. 1927 All. 593; *Narayan Swami v. Ranga Swami*, A. I. R. 1926 Mad. 149; A. I. R. 1933 Bom. 417 F. B.

² *Baldeo Kurmi v. Kashi Chamar*, A. I. R. 1926 All. 312.

³ *Chuni Lal v. Sheo Charan*, A. I. R. 1925 All. 787; A. I. R. 1931 All. 597 F. B.; A. I. R. 1933 Bom. 417 F. B.; A. I. R. 1933 Cal. 699; A. I. R. 1932 Cal. 346; *Secretary of the State v. Maharaja of Bobili*, 54 I. C. 154.

⁴ 31 I. A. 132; 1 Sad. 639 P. C.

and cannot therefore be used in explaining or construing the section.¹

It would seem that in view of the Privy Council case cited above, the contrary opinion expressed in some cases without reference to the Privy Council decision cannot be treated as good law. The question was considered in a full Bench of the Allahabad High Court in *Ramsaran Dar v. Bhagwat Pershad*² and their Lordships held that the question whether a marginal note can be referred to for an exposition of the meaning of a section, depends upon whether the note has been inserted by or under the authority of the legislature. If the marginal note has been inserted by the authority of the legislature, it can be referred to for the purpose of interpretation of the Act. Similar view was expressed in some other cases also.³

Illustrations.—Illustrations are part and parcel of an enactment and unlike marginal notes, they can

¹ *Purandeo V. Narain v. Ramsarup*, 25 Cal. 858 at 860 ; *Ram Lal v Emperor*, 1928 Oudh 15 at 17 ; *Sholapur Sp. and Weaving Co. v. Pandharinath*, A. I. R. 1928 Bom. 341 ; *Balaji Singh v. Mudaliar*, A. I. R. 1927 Mal. 156 ; *Balaji Singh v. Xhakka Gangamma*, A. I. R. 1927 Mad. 83 ; *Bhagia v. King Emperor*, A. I. R. 1927 Nag. 203, *Mahadeva v. Emperor*, A. I. R. 1926 Bom. 382 ; *Padmasi Narain v. The Collector of Thana*, A. I. R. 1926 Bom. 161 ; A. I. R. 1933 Bom. 338 ; A. I. R. 1932 Mad. 391 F. B. ; A. I. R. 1932 Nag. 174.

² A. I. R. 1929 All. 53 F. B.

³ See *Gola v. Emperor*, A. I. R. 1929 Nag. 17 F. B. ; *Bhaga v. King Emperor*, A. I. R. 1927 Nag. 203 ; *Gajendra Singh v. Durga Narain*, A. I. R. 1925 All. 503 F. B.

always be referred to, for the purpose of construing the enactment.¹

But illustrations have by themselves no force of law, but are useful to explain the intention of the legislature.² As an illustration only amplifies the section, it cannot be taken to restrict the sense of the section.³

Where, however, there is a conflict between an illustration and the main section, the illustration cannot override the section.⁴

Punctuation Marks.—In *Maharani Bandawhan v. Krishna Kumaree Dasi*, which was a case under Bengal Regulations, their Lordships of the Privy Council held, following the English precedents, that it is an error to rely on punctuation marks in construing an Act of legislature. The practice of Indian Legislature has consistently been to put punctuation marks in the language used, and authentic copies of enactments with punctuation marks assented to by the Governor-General and the Governors of various Provinces,

¹ *Ram Lal v. Emperor*, A. I. R. 1928 Oudh 15 ; *Rambriga Mudaliar v. S. R. Natthu Swami Ayyar & Sons*, A. I. R. 1927 Mad. 99 ; *Mrs. Agnes Harriet Daud v. Messrs. Murray & Co. Ltd.*, A. I. R. 1925 Oudh 24 ; *Hallappa Kallappa v. Iraurpa Gerineallappa*, A. I. R. 1922 Bom. 1516A, 905 ; 1 U. P. L. R. (P. C.) 25.

² *Naga Mya v. Emperor*, 2 I. C. 641 at 642 ; 48 Cal. 388 ; 22 Cr. L. J. 31 P. B.

³ *Chotey Lal v. Emperor*, 1925 All. 220 at 221 ; *Kesavbrahman v. Ramchandra Raja*, 1930 M. W. N. 638 ; *Balmakundal v. Sohono Kueri*, A. I. R. 1929 Pat. 104 ; *Satish Chander v. Ram Dayal*, A. I. R. 1921 Cal. 1 F. B.

⁴ *Mt. Sajidunnissa v. Sayed Hidayat Husain*, 1924 All. 748 at 749 ; 22 A. L. J. 425, 16 Cr. L. J. 354 ; A. I. R. 1933 Bom. 313 ; *Durga Priya Choudhry v. Durga Pada Roy*, A. I. R. 1928 Cal. 204 ; *Ramalinga Madular v. S. R. Muti Swami Ayyar & Sons*, A. I. R. 1927 Mad. 99 F. B.

are published in the Gazette. It would seem, that the punctuation marks should be used as an aid to interpretation of statutes in India. This view has found favour with Madras and Bombay High Courts, while Allahabad and Calcutta High Courts have held the contrary.¹

Provisos.—A proviso is a limitation upon the effect of principal enactment.² It excepts out of a previous Section or out of a earlier part of a section, something which, but for it, would have been within the enacting part.³

A proviso should be taken together with the language of the section and interpreted in the ordinary manner.⁴ As a general rule, a proviso should not be taken to govern the main proposition of law which immediately proceeds the proviso, unless a contrary intention appears from the words of the statute.⁵

A proviso should not, by mere implication, withdraw any part of what the main provision has given.⁶

¹ Taylor V. R. V. Blench 27 I. C. 494 at 496, 39 Bom. 182; Secretary of the Board of Revenue Madras v. Ramanathan Chetter, 1924 Mad. 455 at 456; Edward Caston v. L. H. Caston, 22 All. 270 at 277; 1900 A.W. N. 59 F. B.; Manilal v. Trustees for the Improvement of Calcutta, 44 I.C. 770 at 783; 45 Cal. 493; A. I. R. 1933 All. 521; A. I. R. 1931 All. 154.

² A. I. R. 1933 Oudh 491.

³ Bhagwandas v. Gajadhar, A. I. R. 1927 Nag. 68.

⁴ Annie Besant v. Advocate General of Madras, 1919 P. C. 31 at 33; 17 A. L. J. 925.

⁵ Queen Empress v. Babulal, 6 All. 509 at 531 and 540; 14 C. W. N. 857.

⁶ Commissioner of Income Tax v. Suppan Chettiar & Co., A. I. R. 1930 Mad. 124 F. B.

But in no case can a proviso be taken to extend the substantive enactment,¹ and a proviso must be restricted to the scope, reasonably conveyed by words used there.²

Previous State of Law.—Where the language of a statute is clear and unambiguous, it should be taken in its natural meaning without reference to pre-existing law on the subject.³ But when the language of the statute is ambiguous, or its import is not clear, reference may be made to previous state of the law in ascertaining the object and intention of the legislature.⁴

It is not proper to refer to proceedings in Legislative Councils and reports of select Committees, in order to determine the true interpretation of the language of a section.⁵ Nor can courts, while interpreting an Act, seek the assistance of the debates in the Legislative Council.⁶ There are some

¹ Ramchandra Serowie v. Gauri Nath Dutt, A. I. R. 1926 Cal. 927.

² A. I. R. 1932 Mad. 46.

³ Administrator General of Bengal v. Premlal Mullick, 22 Cal. 785 at 798; 7 A. L. J. 1041; Kothemdarua v. Annamalai, 1925 Mad. 589 at 590.

⁴ Parbhakan Lal v. Kishan Ram, 313 at 321 F. B. Mad.; Maharaj Tivari v. Harcharan, 26 All. 144 at 147; 1864 A.W.N. 229 F.B.; Tiruvendagada Mudab v. Tripura Sundari, A. I. R. 1926 Mad. 90 F. B.

⁵ Thuj v. King Emperor, A. I. R. 1929 Lah. 641; Abdul Khan v. Shakira Bibi, A. I. R. 1928 All. 124.

⁶ Gurdial Singh v. Central Board Sri Daiban Sabeb, A. I. R. 1928 Lah. 337; Tamijunnesa Khatun v. Purna Chanelsa, A. I. R. 1921 Cal. Ashutosh Gemgemi v. E. L. Watson, A. I. R. 1927 Cal. 149 F. B.; Ghulam Mohammad v. Jaima Ram, A. I. R. 1924 Lah. 374; Dinanath Pal v. Raja Sati Prasad Genga Bahadur, A. I. R. 1923 Cal. 74; A. I. R. 1933 Oudh 274; A. I. R. 1933 Bom. 272; Administrator General v. Premlal Mullick, 22 Cal. 788 at 789.

cases in which the contrary view was held, but it is submitted that they are no longer good law, after the Privy Council decision in *Administrator General v. Premlal Mullick*.

Judicial Precedents.—It is a well settled principle of law that courts should follow Judicial precedents in interpreting the law.¹

When a legislation is found following a continuous practice and repeating the very words on which that practice was founded, it may fairly be inferred that the legislature in re-enacting the statute intended those words to be understood in their received meaning. The inference grows stronger with each successive reenactment.²

It has even been held that an alteration by the legislature of the law as settled by the decisions of the courts does not raise any inference that these decisions were wrong or even that those who had proposed alterations were of that opinion.³

English and American Decisions.—English and American decisions have no authority in British Indian Courts.⁴ But many branches of Indian law are based on English law. Many provisions of Acts, like the Income-tax Act, are derived from English law. English decisions have been held to

¹ 15 A. L. J. 217; *Raja Brij Narain v. Mangala Prasad*, 1924 P. C. 50 at 55; 20 A. L. J. 744; 26 A. L. J. 926.

² *Commissioner of Income Tax Burma v. Bengalee Urban Co-operative Credit Society Ltd.*, 1934 I. T. L. J. page 22 P. C. ; 7 I. T. C. page 61, I. L. R. Vol. 11, Rangoon, page 521.

³ *Bharat Insurance Co. v. Commissioner of Income Tax, Punjab*, 1934 I. T. L. J. page 5 P. C. ; 7 I. T. C. page 151.

⁴ *Miembandi v. Mutsadi*, 1918 P. C. 11, at 20; *Gangadhar Shah v. Swami Nandha Mudali*, A. I. R. 1926 Mad. 218.

embody principles of justice and equity, and good conscience, and Indian Courts have followed English decisions where the law of India is silent on the particular point, or the language of the English statute, on which the particular decision is based, is identical with Indian enactment which is sought to be interpreted.¹

English and even American decisions are applied when a legal point is a novel one, and no precedent can be found in Indian law.²

The Indian Income-tax is not in *pari materia* with the English Income-tax Statutes. It is less elaborate in many cases, subject to fewer refinements, and in arrangement and language it differs greatly from the provisions with which the courts in England have had to deal. Under such conditions, little can be gained by attempt to reason from one to the other, specially in a case where the solution of the problem lies very near the surface of the Act, and depends mainly on general considerations. Case law evolved in the consideration of the English Income-tax Statutes, therefore, should be altogether discarded in the construction of the Indian Act.³ The invocation of the Imperial Income-tax Code and of decisions pronounced upon it, is apt to be very misleading in the interpretation of Indian Income-tax legislation which is framed on other and fortunately much simpler lines.⁴

¹ 1933 A. L. J. 1233 ; A. I. R. 1933 All. 289 F. B. ; A. I. R. 1931 Mad. 729 ; A. I. R. 1932 Sind 150 ; A. L. J. 1932 P. C. 88.

² *Munnisami v. Edachala*, 1928 Mad. 23 at 28 ; 50 Cal. 667.

³ *Commissioner of Income Tax Bengal v. Shaw, Wallace and Co.*, 7 I. T. L. J. page 2 P. C. ; 6 I. T. C. page 178 ; A. I. R. 1933 page 145 P. C.

⁴ *Bejoy Singh Dhadhuria, Raja v. The Commissioner of Income Tax, Calcutta*, 7 I. T. L. J. page 46 ; 6 I. T. C. 449 P. C.

Principles of general application, unaffected by the specialities of the English Law, may be adopted in the absence of express provisions on Indian Law.¹

Principles are however different from specific provisions of statute law, and English and American statute law is not followed in India.²

Retrospective Effects, Substantive and Adjective Law.—Enactments, which alter substantive law and create or alter rights and liabilities, are always to be interpreted as being prospective, and should not be held to affect existing rights³ unless a clear intention to that effect is manifested.⁴

The case of procedural law is different. An enactment which only relates to procedure, has a retrospective effect

¹ *The Pondicherry Railway Co. Ltd. v. The Commissioner of Income Tax Madras*, A. I. R. 1931 P. C. 165 ; 5 I. T. C. 363.

² Reports of Indian Election Petition, Vol. 1 Lahore case, page 43.

³ *Aehra v. Sajir Pramanik*, A.I.R. 1927 Cal. 763; *Mt. Modi Bibi v. Kashi Upadhiya*, A. L. R. 1926 All. 725; *Bhai Kirpa Singh v. Rasail Dev Ajaipal Singh*, A. I. R. 1928 Lab. 627 F. B. ; *Ibedpuyari Rai v. Bishnath Rai*, A. I. R. 1930 All. 708 ; *Hindu Singh v. Mangal*, A. I. R. 1923 Nag. 227 ; *Janendra Narayan Baghchi v. Sardasundari Dasi*, 57 Cal. 796; *R. Chotelai Nand Kishore Nath Shab Sheo v. Tulasingh*, A. I. R. 1928 Pat. 561 ; *Atmaram Bhagwati*, A. I. R. 1925 Nag. 447 ; *Sunder Deo Mal v. Ladburam Khubiram*, A. I. R. 1924 Cal. 240 ; *Vishwanath Sastri v. Sital Kashmi Ammal*, A. I. R. 1921 Mad. 126 ; *Lakshmichand v. Bajirao*, A. I. R. 1921 Nag. 170 ; A. I. R. 1931 All. 635 F. B. ; A. I. R. 1933 Bom. 262 ; A. I. R. 1933 Cal. 435 F. B. ; A. I. R. 1931 Cal. 321 ; A.I.R. 1933 Cal. 92 ; A.I.R. 1932 Mad. 734, 724, 272, 729; A. I. R. 1931 Mad. 831, 61; A. I. R. 1931 Nag. 138, 60 ; A. I. R. 1932 Sind 204.

⁴ *Mt. Ramjhari Kuer v. Gokul Singh*, A. I. R. 1933 Pat. 61 ; *Shikha Kali Kunar v. Chuni Lal*, A. I. R. 1927 Cal. 748; *Veera Shadrayya v. Nagaund Nadii*, A. I. R. 1927 Mad. 41 ; A. I. R. 1931 Nag. 69 ; A. I. R. 1931 All. 635 F. B.

and affects the procedure in all pending actions. Matters of procedure apply to pending cases if the law is changed during the pendency of a suit.¹ The general rule of interpretation of statutes is that alterations in procedure are always retrospective, unless there is some good reason against it.²

The right of appeal to higher tribunal is, however, a substantive right quite different from procedure and cannot be taken away by a subsequent enactment which does not provide for such a right.³ An appeal is a mere continuance of the original proceeding, initiated by the filing of the plaint and the right to continue the proceeding cannot be affected by a new Act, unless it expressly says so.⁴

Publication in the Gazette.—The text of an Act as published in the gazette, must be taken to be the authorized text of the Act, and is to be followed even though the intention of the Legislature is not carried out through accidental mistakes.⁵

¹ A. L. R. 1934 All. 245; Janki Nath Singh v. Nirodhrem Ray, A.I.R. 1930 Cal. 422; Gokul Prasad v. Govind Rao Subedar, A. I. R. 1929 Nag. 282; Nisar Hussain v. Sunderlal, A. I. R. 1927 All. 657; Rajib Lochan Dhar v. Jagesh Chandra Das Gupta, A. I. R. 1924 Cal. 983; Natraja Pillai v. Rangaswami Pillai, A.I.R. 1924 Mad. 657; Mohamuddin Pichi v. Tinnevelly Mills Co., A. I. R. 1928 Mad. 571; A. I. R. 1931 All. 635 F. B.; A. I. R. 1932 All. 30.

² Shrib Narain v. Lachmi Narain, A. I. R. 1929 Lah. 761.

³ Colonial Engineering Co. Ltd. v. Iroing A. C. 369; Sheopuyein Rai v. Bishan Nath Rai, A. I. R. 190 All. 706.

⁴ A. I. R. 1928 All. 437 F. B.; Kirpa Singh v. Rasaldar Ajaipal Singh, A. I. R. 1928 Lah. 627 F. B.

⁵ Rai Brinda Brijjoandan Prasad v. Mabagir Prasad, A.I.R. 1927 Pat. 1924,

Jurisdiction of Courts.—It is an established principle of law that when an Act of Legislature gives any power or makes provisions regarding certain matter by a special enactment, the jurisdiction of ordinary Courts is ousted, and the person aggrieved has to seek his remedy within the provisions of the particular enactment itself.¹ A civil suit therefore will not lie against any action of Income-tax authorities. In order, however, that a suit be barred, the action must be within the four corners of the particular enactment. A civil suit will always lie when any action complained of, is outside the scope of the Act.²

Double Taxation.—Double taxation is against the principle of fiscal legislation.³ “Courts always look with disfavour upon double taxation, and statutes will be construed, if possible, to avoid double taxes.”⁴ The crown is not authorized to levy income-tax twice over in respect of the same source for the same period. But this principle applies only where the legislature has not expressly applied a double tax on particular source of income. All presumptions are against the imposition of double tax, but when the legislature has expressly and in unambiguous words imposed a double burden, effect must be given to the statute. The question of

¹ *Dewa Singh v. Azldad*, A. I. R. 1928 Cal. 562.

² A. I. R. 1929 Mad. 179; *Daya Ram Ramdas v. Secretary of State*, A.I. R. 1925 Sind 130; 1 I. T. C. 250 at 253; *Haji Hakemulla v. Secretary of State*, A. I. R. 1928 Bom. 50; *Secretary of State v. Seth Khanchand Thacomal*, A. I. R. 1925 Sind; *Secretary of State v. A. F. Forbes*, A. I. R. 1922 Pat. 361. See also section 67 *infra*.

³ *Schulze v. S. W. Bensted*, 7 T. C. 30; *Commissioner of Inland Revenue v. Sir Duncan Hay, Bart.*, 8 T. C. 636 at 640.

⁴ *Carr v. Fowle*, 1 Q. B. 251; *Tennessee v. Whitworth*, 117 U. S. 139; *Manindra Chandra Nandi v. Secretary of State for India*, 34 C. 587.

double taxation is one of expediency for consideration of legislature ; it cannot be affirmed as a matter of law, that double taxation is forbidden.¹

The question of double taxation was discussed by Allahabad, Madras and Calcutta High Courts. Dissident judgments were delivered by Rankin and Page J.J. in *Emperor v. Prabhat Chandra Barua*,² Rankin J., holding that the permanent Settlement Regulation 1793, does not confer any exemption from liability to Income-tax, while Page J. opined that such income is not liable to Income-tax. The judgment of Rankin J. who was the senior judge prevailed, and it was held that there is no legal presumption of general character in interpreting a modern statute against double taxation, and it was held that in view of exceptions to incomes liable to income-tax provided by Section 4 (3), the language of a Permanent Settlement Regulation shows that the liability arising from the Income-tax Act is independent of the Permanent Settlement Regulation.³

The Madras High Court has, on the contrary, held that income derived by a Zamindar from forests and fisheries in his Zamindari held under a Permanent Settlement under Mad. Reg. 25 of 1802, is not liable to assessment to Income-tax, on the ground that such income must have been taken

¹ *Dairdson v. New Orleans*, 96 U. S. 97 ; *New Orleans v. Aouston* U. I. U. Ss. 265 ; *Reclarision v. Hagar*, 6 Sawyer 567 ; 4 Fed. Rep. 336 ; *United States v. Benzen*, 26 Cliff 512 ; 24 Fed. Rep. 1112.

² 1 I. T. C. page 28+ ; 51 Cal. 504 ; A. I. R. 1924 Cal. 668.

³ Also *Manindra Nath Nandi*, 34 Cal. 257 ; *Associated Newspapers v. The City of London Corporation*, 2 A.C. 429 ; *Barkar v. Edgar*, 1889 A. C. 748 at 751 ; 2 I. T. C. 392.

into account in fixing the peshcush or Jama, at the time of Permanent Settlement.¹

The Patna High Court has held that income from Jalkars, hat, and gleatlagi, which were included in the assets on which Permanent Settlement was based, were not liable to income-tax,² and the said High Court held that an imposition of Income-tax on the income derived from permanently settled land, would be against the spirit of taxing statutes.

The question was considered by the Allahabad High Court in *Shib Lal Ganga Ram v. The Commissioner of Income-tax U. P.*,³ and it was held that there is "nothing in law to exempt from the operation of Income-tax, any income which has been subjected to some other tax or revenue, on the ground of such tax or revenue having been imposed, and that such income cannot be exempted from Income-tax unless it comes within the exemptions provided by the Income-tax Act itself.

There is thus a conflict of opinion between the several High Courts, and this anomalous position is to continue until the controversy is set at rest either by legislature or a pronouncement by their Lordships of the P. C.

A conquered Raja, who by right of conquest is reduced to a subject, has no rights analogous to Zamindar, and his income from Jalkar is not exempt from Income-tax.⁴

¹ *Zamindar of Singampatti*, 45 Mad. 518; A. I. R. 1923 Mad. 325; 1 I. T. C. 181.

² *Maharaja of Darbhanga v. Commissioner of Income-Tax Behar*, 1 I. T. C. 410.

³ 1 I. T. C. page 425, A. I. R. 1927 All. 703.

⁴ *Radha Mohan Man Singh*, A.I.R. 1928 Pat. 58; 2 I.T.C. 453.

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

P. 2. (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 Government 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 ;

P. 3. (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 ;

P. 3-4. (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 ;

P. 4. (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 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 situated 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 ; and

(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 Local Government to try offences against this Act ;

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

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

P. 6. (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.

P. 7, 8. (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 ;

P. 9. (13) "public servant" has the same meaning as in the Indian Penal Code ;

P. 10.
R. 2, 6. (14) "registered firm" means a firm registered under the provisions of section 26A ;

P. 11. (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

P. 10. (16) "unregistered firm" means a firm which is not a registered firm.

Agricultural Income means

(A) Any rent or revenue } derived from land which is used for agricultural purposes
 and
 which is either assessed to land revenue in British India
 or
 subject to a local rate assessed and collected by offices of Government as such.

(B) Any income derived from such land by } (i) Agriculture,
 or
 (ii) the performance by a cultivator 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 cultivator or a receiver of rent in kind of the produce raised by him in respect of which no process has been employed other than a process of 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 re-
ceiver of rent in kind of any land
with respect to which or the pro-
duce of which any operation men-
tioned 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
such land, requires as a dwelling
house

or

other out-building.

History.—The Income-tax Act of 1860 taxed agricultural income. Such income was exempted from income-tax by the Income-tax Acts of 1866 and 1867. Agricultural income was again made subject to income-tax by Income-tax Act of 1869. Agricultural income was again exempted from income-tax in 1873-74. In 1877 exemption of agricultural income from income-tax was retained not on the ground that the landlords paid revenue to Government but that they paid cess on land which corresponded to income-tax. Owners of permanently settled estates led a powerful agitation against

imposition of any other tax on their income, the Government it seems were not able to make up their minds, and as a result of this indecision non-agricultural incomes in permanently settled areas were ignored. In 1918, when the law relating to Income-tax was revised and consolidated, the Government wanted to provide for the taking into account of agricultural income in fixing the rate at which income-tax was to be imposed. This could not be done on account of opposition of the Legislative Council.

Under the present Act, "agricultural income is exempted from tax under the provisions of section 4 (3) (viii) of the Act and any income to be exempted must fall within the words of this definition. The definition was amended in the Act of 1922 in order to make it clear that rent or revenue derived from land used for agricultural purposes (clause (a)) is exempt from tax only in cases where the land is assessed to land revenue by an authority in British India or is subject to a local rate assessed and collected by an authority in British India, and that the exemption does not apply to cases where the land pays revenues or local rate to authorities outside British India. Clauses (b) and (c) were also amended at the same time in order to make it clear that the limitations in clause (a) apply also to the incomes specified in clauses (b) and (c), so that income derived from agriculture will only be exempt if the agriculture is in respect of land on which land revenue or local rate is paid to an authority in British India.

"A further amendment was also made by the Act of 1922 in clause (b) (iii). Under the previous Acts profits from the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him were included under "agricultural income" only in cases where the cultivator or receiver of rent-in-kind did not keep a shop or stall for the sale of such produce. Under the present Act profits derived

by a cultivator from the sale of the produce raised by him are included in the term "agricultural income" where the produce is sold in its raw state, that is, if no process has been performed in respect of the produce other than a process of the nature described in sub-clause (ii). The tax therefore is now not leviable on the profits derived by a cultivator or receiver of rent-in-kind from the sale of the raw produce raised or received by him even if he keeps a shop for the retail vend of such produce.¹

So far as income-tax is concerned the existence of agricultural income is to be ignored altogether.

Agricultural income does not mean income derived from agricultural land, but it means income derived as rent or revenue from the use of the land for agricultural purposes. Income derived from the lease of the right to fish in a number of tanks, the water of which is used for agricultural purposes but the lessees have no other right in the water, is not agricultural income, and is not exempt from income-tax.²

An annual sum payable to a person during his life in part consideration of a transfer by him of agricultural land is not "agricultural income" within the meaning of the Income-tax Act, as it is not rent or revenue derived from land. It is money payable under a contract imposing a personal liability on the covenantor the discharge of which is secured by a charge on land. The annuity is not therefore exempt from income-tax and super-tax under the Act.³

An allowance, which a taluqdar agrees to pay to his

¹ I. T. Manual, para 2, page 142.

² V. T. S. Seruga Pandia Thevler v. Commissioner of Income-tax Madras, 7 I. T. L. J., F. B. page 226 ; 6 I. T. C. 225.

³ Gopal Saran Narain Singh v. The Commissioner of Income-tax Behar, 1935 I. T. L. J. 226 P. C.

younger brother and his heirs for their maintenance and which is secured by a charge on the taluqa, cannot be regarded as "agricultural income" within the purview of section 2 (1) read with section 4 (3) (viii) of the Income-tax Act and is not, therefore, exempt from income-tax under section 4 (3) (viii) of the Act.¹ Nor is maintenance allowance paid to a widow out of the income of an agricultural estate.²

But amount received by an assessee by virtue of a share in an agricultural estate is agricultural income.³

Profits of an assessee, a lessee of a salt factory, from manufacture of salt, is not agricultural income.⁴

Similarly, income derived by letting out land for purposes of stocking timber is not "agricultural income."⁵

What is Agriculture.—The word agriculture is not defined in the Act. Agriculture according to the new Oxford Dictionary means the cultivation of the soil for fruit products or any other useful or valuable growth of the field or garden tillage; husbandry; also by extension farming including any industry practised by a cultivator of the soil in connection with such cultivation as forestry, fruit raising, breeding, rearing of stock, dairying, market gardening, etc. According to Webster's International Dictionary, agriculture means the

¹ Lal Suresh Singh of Kalakankar v. The Commissioner of Income-tax, U. P., 1935 I. T. L. J. page 305 F. B.

² In re Rani Sultanant Begam, 7 I. T. L. J. page 307.

³ Major L. H. G. Conville v. Commissioner of I. T. Punjab, 1935 I. T. L. J. page 428.

⁴ Linger Reddi v. The Commissioner of Income-tax Madras, 2 I.T.C. 363; A. I. R. 1927 Mad. 848.

⁵ Har Prasad v. Emperor, 1 I. T. C. 417; A. I. R. 1925 Lahore 48.

art or science of cultivating the ground including the harvesting of crops and the rearing and management of live stock, tillage, husbandry, farming.

In Murray's Oxford Dictionary agriculture means "the tillage of the land, the art of cultivating the soil including the allied pursuits of gathering of crops and rearing of live stock, also husbandry—farming in the widest sense."

Murray's and Webster's dictionaries were referred to in Commissioner of Income-tax Madras v. Zamindar of Singampatti.¹

Various definitions of the word agriculture have been given in English as well as in Indian enactments, viz. Rent Recovery Acts, Estates Tenancy Acts, Agriculturist Relief Acts, etc. Agra Tenancy Act II of 1901 defines land as land let or held for agricultural purposes and it has been held in cases under that Act that planting of a grove, or using it for pasture or for raising thatching grass was not agricultural purpose. The definition given in the above mentioned acts are of no help in interpreting the Income-tax Act as these enactments are not in *pari materia* with the latter Act. The object of these Acts is to secure certain rights to tenants as against landholders and the most natural interpretation consistent with the objects of such enactments is to give the word agriculture a restricted meaning. The Acts being intended to place limitations on the legal rights of landholders it is right that the limitations should be strictly construed. In a Madras Case² it was held that agriculture does not include pasturage. There is no reason why such restricted interpretation should be given to the term

¹ I. T. C. page 185.

² Raja of Venkatagiri v. Ayyappa Reddi, 38 Mad. 738.

agricultural income.¹ Nor are the definitions and rulings under United Kingdom Income-tax of much help. In India, agricultural income is exempt from income-tax, whereas in England it is liable to income-tax though under a particular schedule with certain incidental differences in favour of agricultural income.²

The term "husbandry" as used in English Acts is used in the same sense as the word "agriculture" in Indian statutes. It is not restricted to tillage or cultivation of the soil but includes the use of land for the purpose of grazing sheep³ for poultry farming.⁴ Dairying would be regarded as husbandry in England,⁵ whether for the production of butter or feeding young stock in the case of an individual farmer. But a company or society incorporated for the purpose of carrying on the business of creamery from milk supplied by its members who are farmers, the skim milk being returned to the suppliers of milk, and selling the butter produced is not husbandry.⁶

Indian courts have also held that pasture, live stock, cereal, vegetable cultivation,⁷ flower cultivation, sugarcane,

¹ See also *Emperor v. Abgander Allan*, 25 Mad. 627.

² *Halsbury's Laws of England*, Vol. 16, Schedule B of Income-tax Law.

³ *Duncan Keir v. Gillespie*, 7 T. C. 473; *Commissioners of Inland Revenue v. William Ransom & Son Ltd.* 2 K. B. 709.

⁴ *Lcan & Dickson v. Ball*, 10 T. C. 341.

⁵ *Commissioners of Inland Revenue v. The Cavan Central Corporation Agricultural Society*, 12 T. C. 1.

⁶ 12 T. C. 1.

⁷ *Allan* 215 Mad. 1627.

tea, betel, indigo, cotton, jute, flax, tobacco and the like,¹ cultivation of aloe plant,² are included in agriculture.

Agricultural Purpose.—Salami paid for the settlement of waste lands or abandoned holding is agricultural income³ Nazar or Salami paid by a tenant to a landlord for the recognition of the transfer of a nontransferable holding is rent or revenue and agricultural income.⁴

Fee paid to a zamindar by his tenants upon succeeding to occupancy holding by inheritance is agricultural income.⁵

“Illegal abwabs are taxable since they do not come within the definition of “agricultural income”. So also are the following items, viz:— (a) fees received from land used for storing purchase of crops (Paiali), (b) ponyaha nazar or nazar paid by tenant of agricultural holdings at the beginning of the Zamindari year, (c) Nazar for petitions presented to the Zamindars dealing with questions of successions, settlement and partition.⁶ On the other hand, the ruling in the Bengal High Court Case No. 40 of 1920, Birendra Kishore Manikya v. Secretary of State for India⁷ in which it was held that though the premium paid for the settlement of waste lands

¹ Pandadai v. Ramasami, 45 Mad. 710.

² Casseys' Case, A. I. R. 1930 Pat. 44.

³ Birendra Kishore v. Secretary of State, A. I. R. 1921 Cal 262; 1 I. T. C. pages 74-75.

⁴ Nawabzadi Meher Banu v. Commissioner of Income-Tax, 2 I. T. C. 99; A.I.R. 1925 Cal. 929 overruling on this point Birendra Kishore v. Secretary of State, 1 I. T. C. 74-75; Maharajadhiraj of Darbhanga v. Commissioner of Income-Tax, 3 I. T. C. 158, 1929.

⁵ Rajendra Narain Bhanja Deo, 9 Pat. 1 F. B.

⁶ Raja Probhat Chandra Barua v. King-Emperor, High Court of Bengal Reference No. 1 of 1926, II Srinivasan Tax Cases, page 392 and Privy Council Appeal in the same case.

⁷ I Srinivasan Tax Cases, page 67.

or abandoned holdings might reasonably be regarded as "rent or revenue" derived from land as used in this definition, the same consideration did not apply to the Salami or premium paid to a land-holder for recognition of a transfer of a holding from one tenant to another has been overruled in respect of the Salami in question, by a Full Bench of the High Court of Bengal in Reference No. 1 of 1925, *Nawabzadi Meher Bano Khanum v. Commissioner of Income-tax Bengal*;¹ this Full Bench decision was followed by the Patna High Court in Case No. 47 of 1926, *Maharajadhiraj of Darbhanga v. Commissioner of Income-tax, B. & O.*,² and again maintained (by way of obiter dictum) in the High Court's subsidiary decision in the Reference case, already quoted, of *Raja Probhat Chandra Barua*.

"The main judgment in the Reference (which was upheld by the Privy Council) dealt, not with the question of what is exempt under the Act as agricultural income but with the question whether non-agricultural income from permanently settled land is exempt under the settlement, and that question was answered in the negative.

"Again the Patna High Court Case No. 74 of 1919, in the matter of *Bhikampore Sugar Concern*³ and in the Bengal High Court Case No. 83 of 1920,⁴ it has been held that the profits of sugar factories and profits derived from the manufacture of tea as a marketable commodity from the green leaves are liable to assessment."⁵

But where a lump sum is paid under the name of Salami for granting of lease, it is more in the nature of an out and out sale of property and the sum so received by the lessor is in no sense income.⁶

¹ II Srinivasan Tax Cases, page 99.

² III Srinivasan Tax Cases, page 158.

³ I Srinivasan Tax Cases, page 29.

⁴ *Killing Valley Tea Company, Limited v. Secretary of State for India*, I Srinivasan Tax Cases, page 54.

⁵ *Income Tax Manual*, para 2, pages 144-45.

⁶ *Shiva Pershad Sinha*, 1 I. T. C. 384; A. I. R. 1924 Pat. 679.

It is submitted that Nazars paid to a landlord in consideration of conferring of occupancy rights under the Agra Tenancy Act III of 1926 should also not be regarded as income and as such not taxable under the Income-tax Act.

Toddy.—Income derived from toddy is agricultural income when it is received by the actual cultivator, whether owner or lessee of the land on which the trees grow. If the income is obtained by a person who has not produced the trees from which the toddy is tapped or has not done any agricultural operations whereby those trees have been raised, it is not an agricultural income.¹

Forests.—In *Commissioner of Income-tax v. Venkata-Chalapathi*² the judges seemed inclined to the view that income from forestry was agricultural income. Subsequently, it was held that income derived from stacking timber,³ and income from land derived by letting it out for the purpose of stacking timber⁴ is not agricultural income.⁵

If a land-owner grows on his own land which is assessed to land revenue forests or trees and derives income therefrom, he is not liable to income-tax on such income. Persons, however, who take contracts in forests for the cutting down and selling of timber are liable to tax on the profits from such transaction.⁶

¹ Yagappa Nadar, 2 I. T. C. page 470.

² 1 I. T. C. 181 at 185.

³ Emperor v. Probhat Chandra Barua, 1 I. T. C. 284.

⁴ Harpershad v. Emperor, 1 I. T. C. 417 at 418.

⁵ Also Emperor v. P. C. Barua, 1 I. T. C. 293-4-5.

⁶ I. T. Manual, para 2 (iii), page 143.

Income from Fisheries¹ (jalker), ferries and moorings,² markets or *hats*,³ from water supplied to agriculturists who paid one-fourth of the produce for the water supplied,⁴ rent or royalties received by a landowner under licenses granted by him to brickmakers to erect brick kilns on his land and to take away earth for manufacturing bricks⁵ is not agricultural income.

Nor is income of an assessee of a salt factory derived from production of salt by flooding the land with sea water and extracting salt by elimination of other chemicals⁶, or profits received from stone quarries found under culturable but uncultivated land assessed to land revenue⁷ or profits made by an assessee by selling ginned cotton⁸ agricultural income.

Interest on a pronote executed in lieu of agricultural rent is not agricultural income.⁹ But interest on arrears of rent of land used for agricultural purposes is part of the rent derived from the land and is therefore not liable to income-tax, subject to the exception that if the arrears are secured by a bond and are therefore recoverable by a civil suit such interest is taxable.¹⁰

¹ Maharajadhiraj of Darbhanga, 1 I. T. C. 307-8; Mardaraj Behrwarbar Rai, Raja of Parikud, 2 I. T. C. 453; Raja Inuganti Rajgopal Venkata Narsinha, 6 I. T. C. 63; 6 I. T. C. 255.

² 1 I. T. C. 293-5, 307-8.

³ 1 I. T. C. 307-8.

⁴ Col. Malik Sir Umar Hayat Khan, 2 I. T. C. 52.

⁵ Maharani Janki Kunwar, 5 I. T. C. 42.

⁶ Linga Reddi, 2 I. T. C. 363; A. I. R. 1927 Mad. 848.

⁷ Shib Lal Ganga Ram, 2 I. T. C. 425.

⁸ Seth Sheo Lal Ram Lal, 4 I. T. C. 375.

⁹ Raja Inuganti Rajgopal Venkata Narsinha Rayanim Bahadur Varu, 6 I. T. C. 63; A. I. R. 1932 Mad. 435.

¹⁰ I. T. Manual, para 2 (5), page 143.

A legacy allowance is not agricultural income even though the income out of which the allowance is paid be derived from agriculture.¹

Profits from cotton which is the agricultural produce of assessee's own villages are not "agricultural income," if the cotton is ginned in the ginning factory before he takes it to market for sale and as such the profits are assessable. Ginning is not a process essential to enable cotton to be "fit to be taken to market."²

In Permanently Settled Estates.—Income from permanently settled estates in respect of pasturage and derived from land which is used for agricultural purposes is within the exemption given by section 4 (3) (viii) as agricultural income.

Income from "fishery" is not 'agricultural income' and is, therefore, not exempt.

'Sthaljat,' being rent realized from lessors of timber for land used for stacking felled timber is also not 'agricultural income' and as such is assessable. The provision by section 2 of the Income-tax Act of 1922 is not made in such complete abstraction from the facts of the Permanent Settlement as to explain, despite the language of sections 4 and 6, the absence of an express mention of income derived from hereditaments permanently settled among the classes of income to which the Act shall not apply; or as to open the inference that the language of Regulation 1 of 1793 is to be

¹ Vellanki Lakshmi Narasayamma Rao Bahadur Sri Raja, 3 I. T. C. 428; A. I. R. 1929 Mad. 98.

² Seth Sheo Lal Ram Lal v. The Commissioner of Income-Tax C. P. and Berar, 4 I. T. C. 375; A. I. R. 1932 Nag. 61.

an independent test of liability. Income from permanently settled estates is not exempt from Income-tax.¹

Private Canals.—Assessee, being landholders owned private canals, drawing water direct from Jhelum river, from which they irrigated their own lands and from the surplus water the lands of others also, who used to pay them one fourth share of the produce for this use of their water, except in the years when the crop failed.

Held, the income was not "agricultural income" being, in fact, the price paid for water supplied and that the fact that it was paid in kind instead of in cash did not matter and that it was not exempt from liability to be taxed.²

Where the assessee granted licenses for removing earth from his land for manufacturing bricks and erecting brick kilns thereon and for these licenses received a royalty at a certain rate and contended, when assessed to income-tax on this income, that it was capital sale of the brick, earth; held, that the income was assessable, and was not exempt, not being agricultural income, nor capital receipts nor income of casual nature.

Held, that, similarly income from royalty in respect of licenses for taking out kankar (concrete) from assessee's land was also assessable.³

Where the assessee cultivated aloe plants and from them by means of machinery prepared Sisal fibre which he sold in the market, held that the whole of the profits derived

¹ *Emperor v. Probhat Chandra Barua*, 1 I. T. C. 284.

² *Col. Malik Sir Umar Hayat Khan and another v. The Commissioner of Income-Tax Punjab*, 2 I. T. C. 52.

³ *Maharani Janki Kunwar v. The Commissioner of Income-tax Behar and Orissa*, 5 I. T. C. 42; A. I. R. 1931 Pat. 264.

by the assessee from the manufacture of Sisal fibre was "agricultural income" and as such was exempt from taxation.

The assessee, Maharaja of Darbhanga, had a guest house standing in his compound used principally for accommodating European guests when they visit him officially or on a business connected with his estate. The assessee claimed the deduction of annual value of this guest house.

Held, that the dwelling house, of which the guest house was a part and parcel, being required by the assessee as Zamindar, the exemption claimed was valid.

Held, also, that fee paid by transferee of a non-occupancy holding and that paid as landlord's fee under section 12 Bengal Tenancy Act are "agricultural" income and exempt as such.¹

Income Partly Agricultural.—"Rule 23 prescribes the manner in which profits and gains shall be arrived at in the case of incomes derived in part from agriculture and in part from business, and provides for the separation of industrial from agricultural profits in cases where the agricultural raw produce is worked up for the market. Assessing authorities should determine what portion of profits derived in part from industry and in part from agriculture should be regarded as derived from industry and agriculture respectively taking into account the circumstances of each case.

"In the case of tea, where the person growing, manufacturing and selling tea has separate purely agricultural income (e.g., from rent or cultivation of land on which tea is not grown) no account shall be taken of such income in calculating the profits liable to tax. Some concerns again are engaged in the growing of tea seed. Where the tea seed is produced for the use of assessee it must, of course, be included in the profits. No tax should, however, be levied on the profits derived from the growing of

¹ Maharaja of Darbhanga v. The Commissioner of Income Tax Behar, 3 I. T. C. 158 ; A. I. R. 1923 Pat. 463.

tea seed in cases where the tea is sold to a third party and where separate accounts are maintained for the expenditure and receipts for the growing of the seed. Although under section 10 (2) (ix) of the Act the only expenditure that can be allowed to be set against profits or gains taxable in any year, it will only be fair in the case of tea concerns to allow as a charge against profits the whole of the cost of the upkeep (e.g., weeding and draining) of extensions of the estate which are not in bearing. No allowance can be made on account of any capital expenditure in connection with such extensions, such as the acquisition, clearing and draining of the land, the making of roads or the erection of buildings before the cultivation begins, but when once the cultivation has begun with the completion of the planting, the annual cost of the upkeep of such extensions should be allowed as a business extension even although the expense is not in bearing.

“ The following principle should be adopted in calculating the net dividends and regulating refunds on dividends, paid from profits that are only partly taxed in the hands of the company, e.g., companies a part of whose income arises or accrues outside British India and is not received in British India or part of whose income is derived from tax-free securities :—

If X per cent of the profits pay tax in the hands of the company the total income of the shareholder for the purpose of refunds is X per cent of the net dividend multiplied by $\frac{32}{29}$ taking the maximum rate of income-tax as 2 annas and $8\frac{1}{2}$ pies. That part of the profits of the company which is not taxed in its hands will, of course, be taxable in the hands of the shareholder under section 14 (2) (a) if the income is liable to tax under section 4 (1) and is not exempt under section 4 (3) or under one of the notifications issued under section 60. But no addition on account of income-tax should be made to the part of the dividends not taxed in the hands of the company in computing the share-holder's total income.”¹

The principle of assessment is that income only of *bona fide* agriculturists carrying on business of a farmer in the ordinary course of good husbandry is to be regarded as

¹ I. T. Manual, para. 2, pages 143-44.

Also see Bhikampore Sugar Concern, 1 I. T. C. page 29 and R. M. S. T. Poonuswami Pillai, 3 I. T. C. page 378.

agricultural. Where sugar is manufactured with upto-date machinery from sugarcane grown by servants of the factory, it was held that only that portion of the income which could be represented to be derived from sale of sugarcane can be deemed to be agricultural income, but the portion of the income derived from sale of sugar manufactured in the factory is not.

Tea.—"Income derived from the sale of tea grown and manufactured by the seller in British India shall be computed as if it were income derived from business, and 40 per cent. of such income shall be deemed to be income, profits and gains liable to tax."

"Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously been abandoned."¹

Rule 23 runs as follows :—

P. 2. "In the case of income derived in part from agriculture and in part from business an assessee shall be entitled to deduct from such income the market value of any agricultural produce raised by him if received by him as rent in kind which he has utilized as raw material for the purpose of his business or the sale receipts of which are included in the accounts of his business. The balance of such income shall be deemed to be income derived from the business and no further deduction shall be made therefrom in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

(2) For the purposes of sub-rule (1) "market value" shall be deemed to be:—

P. 2.

(a) where agricultural produce is originally sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market the value calculated according to the average price at which it has been

¹ Rule 24 I. T. Manual, page 112.

so sold during the year previous to that in which the assessment is made.

- (b) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of
- (1) the expenses of cultivation ;
 - (2) the land revenue or rent paid for the area in which it was grown ; and
 - (3) such amount as the Income-tax Officer finds, having regard to all the circumstances in each case, to represent a reasonable rate of profit on the sale of the produce in question as agricultural produce.¹

“Rule 23 prescribes the manner in which profits and gains shall be arrived at in the case of incomes derived in part from agriculture and in part from business, and provides for the separation of industrial from agricultural profits in cases where the agricultural raw produce is worked up for the market. Assessing authorities should determine what portion of profits derived in part from industry and in part from agriculture should be regarded as derived from industry and agriculture respectively taking into account the circumstances of each case.

“In the case of tea, where the person growing, manufacturing and selling tea has separate purely agricultural income (e.g., from rent or cultivation of land on which tea is not grown) no account shall be taken of such income in calculating the profits liable to tax. Some concerns again are engaged in the growing of tea seed. Where the tea seed is produced for the use of the assessee, it must, of course, be included in the profits. No tax should, however, be levied on the profits derived from the growing of tea seed in cases where the tea seed is sold to a third party and where separate accounts are maintained for the expenditure and receipts for the growing of the seed. Although under section 10 (2) (ix) of the Act the only expenditure that can be allowed to be set against profits is expenditure incurred solely for the purpose of earning the profits or gains taxable in any year, it will only be fair in the case of tea concerns to allow as a charge against profits the whole of the cost of the upkeep (e.g., weeding and

¹ Rule 23 I T. Manual, pages 111-112.

draining) of extensions of the estate which are not in bearing. No allowance can be made on account of any capital expenditure in connection with such extensions, such as the acquisition, clearing and draining of the land, the making of roads or the erection of buildings before the cultivation begins, but when once the cultivation has begun with the completion of the planting, the annual cost of the upkeep of such extensions should be allowed as a business expense even although the expense is not in bearing. As regards the question as to what is capital or revenue expenditure in respect of tea gardens see paragraph 64.

“Under section 15 of the Indian Tea Control Act, 1933, the owner of a tea estate may transfer his right to obtain export license in whole or in part to any party. The profits resulting from the sales of such export and production quotas and, on the other hand, the expenditure incurred by the transferee in purchasing such quotas should be treated as follows for the purpose of the assessment of income-tax with reference to Rule 24 of the Indian Income-tax Rules, 1922. Where the quotas are transferred by the owner of a tea estate to which they appertain, the price realised should be treated as if it were income derived from the sale of tea grown and manufactured by the seller, since the allocation of the quota has resulted from the growth and sale of tea by the seller in previous years. In that case, therefore, only 40 per cent. of the income derived from the sale of the rights will be held liable to tax. Where, however, a further transfer is made by a person other than the owner of the tea estate to which the quota has been so allotted, whether or not such person is himself the owner of a tea estate to which another quota has been allotted, his profits on that transaction cannot in any sense be said to have resulted from the growth by him of tea and will have to be treated as wholly taxable in the assessment of the seller. The same applies to the profits made by an owner of a tea estate out of a transaction in which he buys a quota and uses it for the export of tea grown in an estate not his own (e.g., after manufacturing tea in his factory from green teas grown elsewhere). If a quota is purchased by the owner of another tea estate and is utilized by him for the exportation of tea grown on his own estate, such purchase enables the purchaser to market the product of his own tea estate, and it follows that the cost of buying the quota will have to be debited to the income of the concern before apportionment under Rule 24 of the Indian Income-tax Rules. Where the quota is purchased by a person who is not the owner of a tea estate, or if purchased by the owner of a tea estate is resold by him or is used by him for the

export of tea grown by an estate not his own, the expenditure will be allowed in full in computing the purchaser's profits, since, as already explained, the net profits of such a person from the transaction are taxable in full and are not covered by Rule 24 of the Indian Income-tax Rules."¹

Usufructuary mortgages.—An usufructuary mortgage is defined in section 58 (d) of the Transfer of Property Act as follows :—“ Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of mortgage money, or partly in lieu of interest or partly in lieu of mortgage money, the transaction is called an usufructuary mortgage.” The question is whether income derived by a usufructuary mortgagee of agricultural land interest, or agricultural income. In a case of a pure usufructuary mortgage there is no doubt that the money received by the mortgagee is agricultural income.² Where, however, the assessee carrying on money lending business lent money in course of such business on the security of land usufructuarily mortgaged to him and on the same day on which the mortgage-deed was executed, leased the mortgaged lands back to the mortgagors with the stipulation for fixed annual payments as rent amounting to a definite percentage on the loan advanced and for the payment of Government Revenue by the mortgagors, it was held in a Madras case that income of such a mortgagee

¹ I. T. Manual, para. 2 (vi), (vii), (vii a), pages 143.

² Mukund Sarup v. The Commissioner of Income-Tax, 2 I.T.C. 495 ; A. I. R. 1928 All. 81.

was not agricultural income.¹ The view was questioned by Allahabad High Court in *Mukund Sarup v. Commissioner of Income-tax*.² After discussing the case of a pure usufructuary mortgage Sulaiman J. observed :

“Coming to the next question whether even if a usufructuary mortgagee is not liable to pay income-tax, a mortgagee who at the same time leases back the mortgaged land to the mortgagor with a stipulation that there would be a fixed annual payment calculated on the basis of rate of interest agreed upon between the parties is in a worse position, it seems to me that to hold that such a person is liable to pay income-tax would amount to holding that the transaction is not that of a usufructuary mortgage, but almost a simple mortgage. It is impossible to hold in this case that the transaction was not that of a usufructuary mortgage. No doubt the mortgage-deed and the lease were executed at one and the same date and the cross references in two documents indicate that the whole transaction was settled at one time. Nevertheless there are certain distinguishing features which make the position of the present usufructuary mortgage quite distinct from what it would have been if he had taken a purely simple mortgage. He has under the lease the right to recover rent through the revenue court which very often is a speedy remedy. He has also the security of the fixed amounts being paid to him regularly year after year with the option of entering into possession on the default of such payment. If he enters into possession after the ejectment of the mortgagor he is entitled to cultivate lands himself or to let the lands to tenants and receive profits from them. Under

¹ *The Commissioner of Income-Tax Madras v. Subramanya Sastrigal*, 2 I. T. C. 152.

² 2 I. T. C. 495 ; A. J. R. 1928 All. 81.

these circumstances it seems impossible to hold that the position of the assessee is that of a purely simple mortgagee who is liable to pay income-tax."

Where an assessee through a mortgage transaction becomes a landlord with respect to the actual cultivating tenants of the mortgaged property, the income derived by the assessee from the land is agricultural income within the meaning of section 2 (1) (a), Income-tax Act (p. 60, c. 1).¹

Subsequently the ruling in 2 I. T. C. 152 cited above was overruled by a Full Bench of Madras High Court in *T. K. E. Ibrahimsa Ravittar v. The Commissioner of Income-Tax Madras*² and the view expressed by Allahabad High Court was followed by Madras High Court also.

The question came up for decision before the Patna High Court in *Rajniti Prasad Singh and another*³ but their Lordships found that the deed which was ostensibly described as a usufructuary mortgage was in reality a simple mortgage, and the question whether income derived by a usufructuary mortgagee of agricultural land is agricultural income or not, was left open.

Of course interest received by a simple mortgagee of agricultural land is not agricultural income and as such liable to income-tax.⁴

Assessee lent a sum, the parties executing two documents simultaneously, one purporting to be a usufructuary

¹ *The Commissioner of Income-tax Behar and Orissa v. Kameshwar Singh of Darbhanga*, 1934 I. T. L. J. page 57 F. B.; 7 I. T. C. 164; A. I. R. 1934 Pat. 120.

² 3 I. T. C. page 33; 51 M. 455; 54 M. L. T. 524.

³ 4 I. T. C. 264; A. I. R. 1930 Pat. 33.

⁴ 4 I. T. C. page 264; 3 I. T. C. 308.

mortgage, and the other a lease from the assessee mortgagee of the same property to the mortgagor. The two documents constituted a single transaction. The intention of the parties as evidenced by the terms of the two deeds was that the mortgagee was not to enter into possession of mortgaged property, nor was he to enjoy the usufruct of the property, nor receive rents from the property or appropriate them in lieu of interest or in payment of mortgage money. The mortgagor was to pay the Government revenue and to remain in possession.

Assessee contended that income received from the lessee-mortgagor, during the pendency of the term of lease and usufructuary mortgage was agricultural income, not assessable.

Held that the nature of the transaction was a simple mortgage and that interest reserved by the document in this case and paid to the assessee during such period as he was not in possession of the leased property was assessable to income-tax.

Where assessee purchased Government Securities and paid a sum to the vendor equivalent to the amount of interest due to the latter from the Government on account of interest between the last date of accrual of interest and the actual date of sale of Securities at his own convenience and to facilitate the withdrawal of interest, and quite apart from the sale price, held the sum was assessable to tax and super-tax.

Held also that cost of collecting interest on Securities was also not deductible.¹

¹ Rajniti Prasad Singh and another v. The Commissioner of Income-Tax Bihar and Orissa, 4 I. T. C. 264 F. B. ; A. I. R. 1930 Pat. 33 F. B.

Where an assessee doing money-lending business takes usufructuary mortgage from a mortgagor and leases the land mortgaged back again to that person receiving rent from him, held (F. B., Lakson J. dissenting) that rent is not assessable to income-tax, being agricultural income, or rent derived from land used for agricultural purposes.¹

Pasturage.—Income from pasturage being income from money realized from persons grazing cattle in forest lands or waste lands comes within the expression agricultural income.² The law in India in this respect is different than the law in England where income derived from land leased out and used for grazing cattle for persons other than the lessee does not constitute income from husbandry.³

Sporting Rights etc.—In England husbandry does not include the leasing of sporting rights. Also income derived from a stallion kept on agricultural farm by serving outside ears has been held not to be income from husbandry.⁴ Similarly, income from breeding steed at which mares are raised and trained is not agricultural income.

It is submitted that the principle enunciated in English law will be applied when similar question arises for decision.

Rent or Revenue.—These words are not defined in this Act. But there is obviously some difference between their meaning. Rent, according to Transfer of Property Act IV of 1882, means money share of crops, service, or anything of

¹ T. K. E. Ibrahimsa Ravallat v. The Commissioner of Income-Tax Madras, 3 I. T. C. 33; A. I. R. 1928 Mad. 543.

² Prabhat Chandra, 51 Cal. 504.

³ Mc Kenna v. Kerliby, 7 Tax Cases 620.

⁴ Malcolm v. Lockart, I. T. C. 99.

value, to be paid, rendered periodically, or on specified occasions. The Tenancy Acts of the various provinces have given similar definitions of rent.¹ Rent is the share in cash or kind, to be paid or delivered by tenant for land held by him. It is thus distinguished from interest which is the return made for the use of the lender's money by the borrower.²

Revenue is defined in the Oxford Dictionary as the "return, yield, profit of lands, property, or other important source of income, that which comes to one as a return from property or possessions, specially of an extensive land; income from any source but specially when large and not directly earned."

Revenue is generally used as a word of wider denotation than rent. In various Indian land revenue enactments, the word revenue is used in the sense of what is to be paid to Government by land-owners in contradistinction to what is paid by the tenants to land-owners.³ Sometimes the Government relinquishes its revenue in favour of individuals in return for meritorious service. Probably the word revenue used in this section, is used to cover the case of such a person receiving revenue as an assignee of the Government. Salami paid for the settlement of waste land⁴ is rent, while illegal

¹ Madras Estates Act I of 1908, Sec. 3; Bengal Tenancy Act 8 of 1885, Sec. 3; C. P. Tenancy Act I of 1920 Sec. 2 (8); Punjab Tenancy Act 16 of 1887 Sec. 4 (3); Agra Tenancy Act III of 1926, Sec. 3 (3); Oudh Rent Act 17, Sec. 3 (5).

² Rajniti Pershad Singh, A. I. R. 1930 Pat. 33; 4 I.T.C. 26f.

³ Raja Rajendra Narain Dev, 4 I. T. C. 1; 9 Pat. 1.

⁴ Birendra Kishore, 1 I.T.C. 74.

cesses from tenants, Nazar, punyaha Nazar, Nazuns paid for recognition of succession etc. are not rent.¹

"Assignment of land revenue to a Jagirdar is not assessable to income-tax in the hands of Jagirdar."²

Cultivator or receiver of rent in kind.—A cultivator is a person who actually tills the soil himself;³ or by hired labour. A receiver of rent-in-kind may be a landlord, a thekedar, a permanent tenure-holder, a tenant who has sublet his land who receives part of the produce of the land by way of rent. A receiver of rent in kind would, it is submitted, cover the case only of persons who get a share of the produce, and not those who receive the money value of their share of the crop by appraisement.

Process ordinarily employed by a cultivator, etc.—The test for exemption is that the process employed should be one which is ordinarily employed to render the produce fit for being taken to market. This is essentially a question of fact and necessarily depends on the facts and circumstances of each case. At times it is very difficult to ascertain the exact point at which operations which should be called agricultural end, and then merge into processes which should not be regarded as agricultural, but should be treated as manufacturing processes. Thus cutting of plants, cleaning of corn, threshing and storing, etc., should be regarded as agricultural processes. Thus husking of paddy is a process ordinarily employed by an agriculturist, so is the preparation of gur,

¹ Birendra Kishore Manikya, 1 I. T. C. 67; V. S. K. Somassundarin Chetty, 2 I T. C. 99.

² I.T. Manual, para 2 (9), page 143.

³ Bhikampore Sugar Concern, 53 J. C. 38; Killing Valley Tea Co., 1 I. T. C. 54; 48 Cal. 161.

but not sugar refining by the aid of up-to-date machinery.¹ Similarly, income from cultivating and plucking of tea leaves is agricultural, while the manufacture of the leaves into a fit state for consumption with up-to-date machinery is not.² It would appear that in such cases there is a combination of agricultural and manufacturing processes and the income from the former alone is exempt.³

The tax therefore is not leviable on the profits derived from the sale of the raw produce even if the cultivator or receiver of produce keeps a shop for the retail vend of raw produce.⁴

Market means a place of economic exchange, and does not include purchase of raw material by some agency, e.g. jail.⁵

Building.—Incomes from buildings is exempt from income-tax only if the said buildings are (1) in the immediate vicinity of the land with respect to which, or the produce of which, any operations mentioned in sub-clauses (2) and (3) of clause (b) is carried on, (2) the receiver of rent or revenue or the cultivator or receiver of rent-in-kind requires it as a dwelling house, store house, or other out-building, (3) and so requires because of his connection with the land.

Two classes of buildings are here mentioned (1) those owned and occupied by the receiver of the rent or revenue of such land and (2) occupied by the cultivator, or the receiver of the rent-in-kind.

¹ In Bhikampore Sugar Concern, 1 I. T. C. 29.

² In re Killing Valley Tea Co., 1 I. T. C. 54.

³ Bhikampore Sugar Concern, 1 I. T. C. 29.

⁴ I. T. Manual, para. 2, page 143.

⁵ Cassey, 1930 A. I. R. Pat. 44.

The word "requires" means that the assessee demands to appropriate the building for the purpose of a dwelling house etc. He is the sole judge of his requirements and the income-tax authorities cannot substitute their discretion for that of the assessee and say that a particular house is more or less than what is his actual requirement.¹ The exemption extends to the whole buildings and not to a part of it only.

The mere occupation of a building by an agriculturist will not as such exempt it from income-tax. The words "by reason of his connection with the land" show that the building should be occupied on account of his connection with the agricultural lands and these words explain the nature of the class of persons who are entitled to exemption from income-tax.²

In villages sometimes ryots have to pay parjot or khanashumari for the occupation of Abadi plots. If such plots are occupied by agricultural tenants, such payments would under this class be exempt from income-tax,³ but there seems to be no reason why payments made by non-agricultural residents be so exempt. In towns also, there are plots of land which are assessed to land revenue and which are let out to tenants for residential purposes. Such plots are not ones to which any of the conditions mentioned in clauses (2) and (3) are applicable, and hence income from such plots though received as rent is not exempt.

The word "building" is not defined in the Act. In the various Municipalities Acts the word means "a house, hut,

¹ Maharajadhiraj of Darbhanga, 3 I. T. C. 158 ; Rajendra Narain Bhanja, 4 I. T. C. 15 F. B.

² Rajendra Narain Bhanja, 4 I. T. C. 15.

³ Maharaja of Darbhanga, 3 I. T. C. 1501.

shed or other roofed structure of whatsoever material constructed, and every part thereof, but not a tent, or other such portable and merely temporary shelter.¹ Some such definition would have to be adopted in case a dispute arises about the meaning of the word.

“Occupied.”—The occupation is not to be confined to the case of physical possession alone. Occupation implies power of control or dominion over the premises. Thus occupation by a servant who is either permitted to live in the master’s house or required to do so in pursuance of a contract of service is not legal occupation. On the other hand a person may occupy the premises through his servants or agents though he may not physically by himself occupy them. The test of occupation is the power to enter into physical possession at pleasure as well a general control.²

Assessee.—The word “assessee” is defined to mean a person by whom income-tax is payable. Income-tax includes super-tax which is defined in section 55 to be “an additional duty of income-tax.” Under section 3 (39) of the General Clauses Act, the word “person” includes any company or association or body of individuals whether incorporated or not.

“The charging sections (sections 3 and 55) lay down who the persons and associations are who are liable to income-tax and super-tax. Income-tax is payable under section 3 by every individual, Hindu undivided family, company, firm and other association of individuals, and super-tax under section

¹ See U. P. Municipalities Act II of 1916, Section 2 (2).

² *Bradley v. Baytis*, 8 Q. B. 195; *M. C. Lean v. Pricbard*, 20 Q. B. D. 285; *Arnold’s Corporative* 11-3; *In re Surendra Chandra Ghose*, I. L. R. 45 Cal. 950; *Halsbury’s Laws of England*, Vol. 12, page 177, paragraph 367.

55 is payable by every individual, Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm. While both income-tax and super-tax, therefore, are payable by every individual, Hindu undivided family, company and other association of individuals not being a firm, there is distinction in the case of firms. All firms whether registered or unregistered are liable to pay income-tax but while unregistered firms are liable to pay super-tax, registered firms are not. The income of registered firms is liable to super-tax in the hands of individual partners of the registered firm. Co-operative Societies, Clubs (not being companies) and Chambers of Commerce are examples of "association of individuals."

"Private provident funds of companies and firms should not be assessed to income-tax as " other associations of individuals otherwise than by deduction at the source upon their income from investments and should not be charged to super-tax at all. They are also eligible for refund of tax under section 48 if they comply with the provisions of that section.¹

History.—The word "assessee" was not defined in the Income-tax Act of 1886. In the Act of 1918 an "assessee" was defined as a person by whom income-tax is payable and includes a firm and a Hindu undivided family. In 1922 it was proposed to enlarge the definition of assessee by including in its denotation partnerships of firms but subsequently section 3 was so altered as to cover the cases of a company, firm and other association of individuals and the definition of assessee was left intact.

The term assessee is used in the sense of determining or finding out the income of the assessee liable to be taxed²

¹ Income-tax Manual, para. 3, page 145.

² Rai Bahadur Chotey Lal, 5 I. T. C. 466.

and applies only to "a person by whom income-tax is payable," which means a living person. Prior to the enactment of section 24-B there was no provision for the assessment income-tax or super-tax of a deceased person¹ nor could the term assessee include the legal representatives of a deceased person and the heirs of a person cannot be taxed in respect of income received by him during his life time.²

Person etc.—The expression "person by whom income-tax is payable" limits the application of the term assessee only to those persons who can be assessed to income-tax if their income is found liable to tax. It does not apply to those who cannot under the law be assessed to income-tax, *e.g.*, the crown. As such buildings etc. used for the purposes of the Government are therefore not liable to tax.³

Where however, the crown carries on some trade, such as Building of Railways etc., it does so as an ordinary trader and not as the sovereign of the realm and is therefore liable to tax.

Person includes any company or association or body of individuals, whether incorporated or not.⁴ The word person covers a firm and the firm as such is assessed to income-tax no matter how profits are applied.⁵ Each partner in a firm is an assessee in respect of profits and gains of business

¹ *Mitchel v. McNeil & Co.*, A. I. R. 1927 Cal. 518; 2 I. T. C. 298; *Commissioner of Income-tax Bombay*, 33 Bom L. R. 388.

² A. I. R. 1931 Bom. 333. See notes under section 24B *infra*.

³ *Justices of the country of Back*, 2 T. C. 1 (H. L.)

⁴ Sections 31, 37 of General Clauses Act.

⁵ *Ayrshire Pullman Motor Services & I. M. Ritchie*, 14 T. C. 754; *Commissioner of Income-tax Nagpore*, A. I. R. 1930 Nag. 183; 4 I. T. C. 255.

carried on by the partnership.¹ A contrary view has however been expressed by the Chief Court of Nagpur, the Court holding that a partner is not an assessee in respect of the profits of a partnership of which he is a partner on the ground that the firm as such is assessed to tax.²

Executor.—Under Act II of 1886 it was held that income accruing to an executor under a will was liable to income-tax. Under the present Act there is no provision exempting an executor of a will and an executor in receipt of income liable to tax will come under the definition of assessee and as such liable to tax.³

Business : History.—The word business was not defined in the Act of 1886 and income from this head was included in Part III—Profits and joint stock companies, or Part IV—other income as the case may be. The present definition was first introduced in the Act of 1918.

Scope of the term.—The English Income-tax Act of 1918 defines trade as “including every trade, manufacture, adventure, or concern in the nature of trade.” The word business has not been used in English Law of Income-tax. It would appear that the definition of business as given in the Indian Income-tax Act is wider than the definition of trade given in English Law.

The word “includes” means that the definition is not exhausted by the words that follow, but its denotation covers something more than is covered by those words. The question whether the definition is exhaustive or not was discussed

¹ Commissioner of Income-tax Mad., 1 I. T. C. 278 ; 47 Mad. 660.

² Commissioner of Income-tax Nag., A. I. R. 1930 N. 183 ; 4 I. T. C. 255.

³ A. H. Forbes, 42 Cal. 151 ; 1 I. T. C. 8.

in the *Royal Calcutta Turf Club v. Secretary of State*,¹ which was a case under the *Excess Profits Duty Act*, the definition of the word *business* being the same in the said Act, as is to be found in the present *Income-tax Act*. The word "includes" should, it is submitted, be taken to mean "means and includes." The word "means" alone has been used in places when an exhaustive definition has been intended.² The word *business* has a wider meaning than the word *trade*.³ In *Imperial Dictionary* the word *business* is said to mean a matter or affair that engages a person's time, care and attention, an affair receiving or requiring attention, specially that which occupies a person as his chief concern; that which one does for a livelihood, occupation, employment. *Jessel M. R.* defined *business* as "anything which occupies the time and attention and labour of a man for the purpose of profit."⁴

The word imports something which occupies the attention and labour of a person with a view to profits as distinguished from mere sport or pleasure, and the word is used in the sense of continuous occupation with a view to make a profit.⁵ A casual dealing in a particular kind of activity even though it may result in profit does not constitute business.⁶ Profits may be made by the sale of land or moveable

¹ 1 I. T. C. 108; 48 Cal. 844.

² Vide Section 2 (4), 5, 6, etc., *Commissioner of I. T. Bombay v. National Mutual Association of Australia*, A. I. R. 1933 Bom. 427.

³ *Harris v. Amercy*, 352 J. C. P. 92.

⁴ *Smith v. Anderson*, 15 Cl. D. 258.

⁵ *Rogers Pyatt Shella Co.* 52 Cal.; A. I. R. 1925 Cal. 34; I. T. C. 363.

⁶ *Şeth Ganga Sagar*, A. I. R. 1934 All. 370.

property or by realization of securities, which may be only successful realisation of assets or alteration of investment. In order to constitute carrying on of business, the transaction must be of reasonable frequency. The line is at times difficult to define, and each case is to be judged on its own facts.¹ Thus, where a Barrister who was occupying a house and 79 acres of land as private residence and for pleasure, used some of the land for growing vegetable, fruits, and flowers which he sold and also occasionally bought and sold horses and cattle, it was held that he did not carry on a business.² In Ganga Sagar's case, cited above, the test to determine whether profits or losses of purchase and sale of stock and shares constituted carrying on of business was laid down as follows :

“It is the intention with which the purchase is made which makes the difference. One may either buy shares or securities with the object and intention of making a gain from the sale when these shares or securities have risen to a higher price or he may purchase the shares or securities with the intention of keeping his capital safe and receiving meanwhile a certain dividend or interest. The intention must be deduced from the facts and from the circumstances of the case. When a man makes a business of speculating, this will be deduced by the court from the fact that he makes numerous purchases and sales, the sales being within a short time of the purchases.

On the other hand where a man makes a few sales, although he may make a number of purchases and where the

¹ Board of Revenue v. R. M. A. R. M. Adunchulam Chettiar, 47 Mad. 97 ; 1 I. T. C. 238 ; California Copper Syndicate v. Harris, 5 Tax Cases 159.

² Re Wallis Sober, 20 L. J. Ch. 602.

sales are made at long intervals after the purchases, the conclusion to be drawn is that he is not indulging in the business of speculating in these stocks and shares but that he investing his capital.”

It is clear, therefore, that a man who sells his land or pictures, or jewels, is not chargeable with income-tax on the purchase money or on the difference between the amount that he gave and the amount that he received for them. But if instead of dealing with his property as owner, he embarks on a trade in which he uses that property for the purpose of his trade, then he becomes liable to pay, not on the excess of sale price over the purchase price, but on the annual profits or gains from such trade, in ascertaining which price will no doubt come into consideration.”¹

A distinction is drawn between business as defined in section 2 (4), Income-tax Act and receipts which are of a casual and nonrecurring nature mentioned in section 4 (3)(vii). Where A makes a practice of speculating in the purchase and sale of shares, his profits are liable to income-tax, that is, where there is a purchase with the intention of speculating. It is in the intention with which the purchase is made which makes the difference. The intention is to be deduced from acts and from the circumstances of the case. Where a man makes a business of speculating, this will be deduced by the Court from the fact that he makes numerous purchases and sales, the sales being within a short time of the purchases. On the other hand where a man makes few sales, although he may make a number of purchases, and where the sales are made at long intervals after the purchases, the conclusion to

¹ Hudson Bay Co. Ltd. v. Stevens, 5 Tax Cases 424; Commissioner of Taxes v. Melbourne Trust Ltd., 1914 A. C. 1001.

be drawn is that he is not indulging in the business of speculating in those stocks and shares, but that he is investing his capital in those stocks and shares.¹

The words used in section 2 (4) of the Indian Income-tax Act, XI of 1922, in defining the term "business" mentioned in section 6 (iv) of the Act, are no doubt wide, but underlying each of them is the fundamental idea of the continuous exercise of an activity. The same central idea is visible in section 10 of the Act where the words "carried on by him" are an essential constituent of that which is to produce the taxable income; it is to be the profit earned by a process of production. This is borne out of the provision for allowances which follows. They include rent paid for the premises where the business is carried on; the cost of current repairs in respect of such premises; interest on money borrowed for carrying on the business, etc.²

Trade.—The word trade is derived from a root which means a beaten path, hence trade means a way or path, an occupation which a man carries on for procuring his living or for profit, a handicraft or mechanical or mercantile employment. It is distinguished from liberal professions and from agriculture and includes buying and selling for money. Trade per Jessel M. R. "is a compound fact made of a variety of incidents,"³ where a person habitually does and contracts to do a thing capable of producing profit, and for the purpose of producing profit, he carries on trade.⁴ Trade implies at

¹ *In re Ganga Sagar*, 1934 I. T. L. J. page 110; 7 I. T. C. page 81.

² *Commissioner of Income-tax Bengal v. Shaw, Wallace & Co.*, 7 I. T. L. J. page 1; 6 I. T. C. 178.

³ *Grichsen v. Last*, 4 Tax Cases 422.

⁴ *Werle v. Colquhoun*, 2 Tax Cases 402.

least two persons and no person can trade with himself. Members of Mutual societies cannot be said to be carrying on a trade in respect of mutual transactions.¹

Commerce.—The word commerce according to Webster means the exchange or buying and selling of commodities, especially the exchange of merchandise on a large scale. According to Stroud “Commerce is traffic or merchandise in buying and selling of goods.” Commerce implies the idea of buying and selling on a large scale, specially between different countries and communities. The distinction between trade and commerce is rather subtle, being presumably of degree only. Both trade and commerce being included in the definition of business the distinction is of little practical importance.

Manufacture.—Manufacture means the operation by which raw material of any kind is converted into finished goods used by man, by more or less complicated processes.

Adventure.—An adventure means a mercantile or speculative enterprize or hazard (Webster), a bold and dangerous undertaking of uncertain issue, a speculation of any kind, commercial, financial, or mining, specially a speculation in goods sent abroad (Imperial Dictionary). A successful negotiation of the sale of a large mill which results in a substantial commission must be regarded as an adventure, the commission must be regarded as income arising from business.²

Concern.—Concern means an affair, an establishment, a firm for the transaction of business, a manufacturing or

¹ Dublin Corporation v. McAdam, 2 Tax Cases 387.

² Chunni Lal Kalyandas, 47 All. 368; 1 I. T. C. 419; A. I. R. 1925 All. 469.

commercial establishment (Imperial Dictionary). The word concern, as distinguished from adventure, implies the idea of continuity as opposed to the idea of risk which is implied by the word adventure.

In the nature of trade etc.—These words have been held to govern the word “Concern” and not adventure.¹

From the cases cited, it follows that three elements are necessary to constitute business: (1) buying and selling or manufacture with a view to sell for profit, (2) the chief aim of the activity being profit, (3) an amount of continuity or frequent repetition of the particular kind of activity.

The idea of profit being the predominant element of business, it is immaterial how the profits earned are applied. The motive for the earning of profit is immaterial, and it does not matter how the profit earned is disposed of, and a business will not cease to be such, because the profits are earned with some motive of charity or other such motive.² Similarly, profits derived from business carried on by an Official liquidator during the course of bankruptcy proceedings, such business being accidental to the Insolvency proceedings, was held to be carrying on of business, and its profits liable to tax.³

¹ Liverpool and London and Globe Inoniann Co. v. Bennet, 1913 A. C. 610 ; 6 Tax Cases 327.

² Trustees Psalms and Hyins v. Whitwell, 3 Tax Cases 7 ; Religious Tract and Book Society v. Forbes, 3 Tax Cases 413 ; Grove v. Y. M. C. A. 4 Tax Cases 613 ; Mersey Docks v. Lucas, 1 Tax Cases 365 ; Coman v. Governors of Rolunda Hospital and others, 7 Tax Cases 517.

³ Armitage v. Moore, 4 Tax Cases 199.

A factory is no doubt a business,¹ and so is extracting and sale of coal.²

Bookmaker or Inventor.—It is doubtful if a person who habitually invents and is granted many patents, on which he gets a royalty, or a bookmaker who habitually writes books on which he gets a royalty from the publishers can be said to be carrying on a business. In *Inland Revenue Commissioner v. Sangster*³ the position of an inventor was discussed as follows.

Per Rowlatt, J.—.....The (assessee) is managing director of a company; that is not, nor is being a shareholder, carrying on a business. He is also an owner of royalties. That again is not carrying on business. But those are the whole sources of his income. It is true that he is adding to his royalties, and he is performing his duties of managing director of the company and it may be very advantageous that he has those positions—that he has that particular form of property and is creating more, but I do not think those matters can be added together and that it can be said, in what I cannot help describing as loose way, “Look at the general position.” I think the assessee’s position must be dissected and what his income is really derived from must be ascertained. In my judgment it is derived from those three distinct sources, and he is not, in respect of each or all of them put together, deriving this royalty income from a business.

It is said that if a person habitually invents, or habitually paints pictures or habitually writes books, with

¹ *Rogers v. Spyatt Shellac Co.*, A. I. R. 1925 Cal. 34 ; 1 I. T. C. 863.

² *Isabella Coal Co. v. Commissioner of Income-Tax*, A. I. R. 1926 Cal. 396 S. B. following 38 Cal. 372 P. C.

³ 1 K. B. 587 ; 12 Tax Cases 208.

a view to gain from the patents when he has taken them out, the books which he has written and the pictures which he has painted, that is carrying on a business, and I feel a little difficulty about it. Very possibly if a person habitually paints a number of pictures year after year and sells them, it would be said that he was carrying on a business. He might be a professional man, but that is another matter. If he was writing books habitually year after year and carrying on a business, I suppose he would be assessable under Schedule D in respect of it. If he was inventing patentable devices year after year and selling them and gaining an income, it would be difficult perhaps to say that he was not carrying on a business. I do not know whether that could be said—and if he kept on developing land and selling year after year he would be carrying on a business. On the other hand (Counsel for assessee) asks, "Supposing he has land and keeps on building on it and never sells it at all but has rent from the houses that he builds, is he carrying on a business?" One cannot help feeling that the answer to that question must be "No," because he is merely investing his money in new property and keeping it, he is not dealing with it in any way.

Now the (assessee) does not sell his patents. He sold one twenty-five years ago, but it is quite clear that that is not the way in which he deals with the produce of his inventive ability. He simply keeps on inventing things and keeping the patent in his own hands, making what he can out of it by granting licenses, just as a man builds a house and makes something out of it by letting it. Of course a painter cannot, as things are, do otherwise than sell his pictures. An author is more like an inventor, because he can grant licenses under royalties.

It seems to me that the true position is that, unless it can be shown that the property called into existence by the invention, or by the painting, is sold so as to obtain a money return against it, no evidence is produced that the inventor or the artist is carrying on a business. If the artist or the inventor sells the product of his ability, in many cases inquiry would have to be made whether he does so habitually as to bring him within the category of persons who carry on a business, but if he does not sell at all I do not think there is any evidence in support of the contention that he carries on a business.

It is said, for the Crown, that by granting these licenses the (assessee) is putting his patent on the market. So he is, but so is the man who builds a house and lets it. It seems to me that carrying on a business involves, in a case like this, the disposal of the article, which is produced as opposed to retaining it as a valuable thing in itself, which can be treated as an investment, just as any thing bought with the money obtained for it if it had been sold could be treated as an investment. On those grounds I think that the (assessee) cannot be regarded as carrying on a business.

I think it better not to say anything upon the question whether if I had held he was carrying on a business, I should have held that his business was a profession.....*lulaud Revenue Commissioner v. Sangster.*"

It seems that the position of a book-maker is not different, and the contrary view expressed by way of *obiter dicta* in *Chunni Lal v. Kalyan Das*,¹ it is respectfully submitted, does not lay down the law correctly.

¹ 23 A. L. J. 63 ; A. I. R. 1925 All. 287; 1 I.T.C. 418.

The question before the learned Judge who decided the case reported in 23 A. L. J. 63, was whether profits arising out of wagering contracts which are illegal was taxable or not. It was rightly held that illegal incomes are taxable.¹ There can be no objection to the judgment so far. But there seems to be no justification for the comparison of illegal incomes with the income of a book-maker, and the observation that "as to whose business there can be no doubt whatever that it is entirely gaming and wagering." The income of a book-maker is, it is submitted, anything but gaining and wagering, and there is absolutely nothing illegal about it.²

The Central Board of Revenue.—Clause (4A) was added by the Central Board of Revenue Act IV of 1924. Before the passing of the Act IV of 1924 the functions of Central Board of Revenue were performed by the Board of Inland Revenue.

Company.—"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 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 (Section 2 (6)).

The words "Central Board of Revenue..... Act" were added by the Central Board of Revenue Act IV of 1924.

¹ Partadge v. Mallan.

² See Notes under section 4 (3) (vii) infra, para 45 of I. T. Manual, pages 175-176.

The word company was defined in the Act of 1886 as "An association carrying on business in British India whose stock or funds is or are divided into shares and transferable whether the company is incorporated or not and whether its principal place of business is situated in India or not." The present definition was first adopted in 1918 and incorporated in its modified form in 1924.

Section 2 (2) of Indian Companies Act VII of 1913 defines a company as "a company formed and registered under this Act or an existing company."

Five kinds of companies are contemplated by this definition :

- (1) Companies as defined in the Indian Companies Act.
- (2) Companies formed in pursuance of an Act of Parliament.
- (3) Companies formed by Royal Charter or Letters Patent.
- (4) Companies formed by an Act of the Legislature of a British possession.
- (5) Any foreign association carrying on business in British India declared by the Central Board of Revenue to be a company.

Section 5 of Indian Companies Act prescribes the mode of formation of a company as follows :—

5. Any seven or more persons or, where the company to be formed will be a private company, any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of

Mode of forming incorporated company.

registration, form an incorporated company, with or without limited liability (that is to say), either—

- (i) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares) ; or
- (ii) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee), or
- (iii) a company not having any limit on the liability of its members (in this Act termed an unlimited company).

The laws of other British possessions as to incorporation differ, but a company which is deemed to be a duly incorporated company according to the law of the particular British possession in which it is incorporated, will be regarded a company for the purposes of this Act, no matter what may be the motive of the incorporation; the incorporation cannot be challenged when formally proved.

" This definition includes all companies constituted in the Dominions of the Crown, while the latter part of the definition is confined to such foreign associations as the Central Board of Revenue may desire to treat as companies for the purposes of the Act. The object of this latter part is to include associations such as the French Societes Anonymes which, though incorporate bodies, have many characteristics in common with the companies

recognised by our law, if the Central Board of Revenue thinks that they should be treated as companies for the purposes of the Act."¹

Company and shareholders.—Section 24 of Indian Companies Act provides that a certificate of incorporation granted by the Registrar of Joint Stock Companies is conclusive evidence of the fact that all the requirements of the law have been complied with, and the company becomes a separate entity, a body corporate, an entity distinct from the shareholders, and having by a fiction of the law, a juristic existence of its own. The company is not the agent of the shareholders, and income received by it, is not as such agent. An interesting question may arise as to the number of shares that each shareholder must purchase in the company. As shown above, the number of shareholders according to the Indian Companies Act must be at least 7 in the case of a Public company and at least 2, in the case of a private one. But the section does not forbid the formation of a company in which all but one of the shareholders are mere holders of only a small number of shares, it may be even one, while the greater part of shares are owned by one man only. In such a case, the company would be virtually one man's concern, though styled as a company. But there is nothing in law to prevent the formation of such a company and the one man will derive all the advantage of carrying on business as a company his liability for the debts being confined to the extent of his shares.²

A company in liquidation is included in the word company.³

¹ Income-tax Manual, para. 4, page 145.

² Solomon v. Solomon, 1897 A. C. 22.

³ Commissioner of Income-tax v. The Official Liquidators, Agra Spinning and Weaving Mills Co. Ltd. (in Liquidation), 1934 I. T. L. J. page 10 ; 56 All. 685 ; 1934 A. L. J. 221 ; A. I. R. 1934 All. 170.

The official liquidator is bound by an assessment of the company before the order of winding up.¹

Company and Partnership.—A partnership is the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.² The individual members of a partnership are jointly owners of the partnership property, while the company is a juristic person whose property vests not in the shareholders, but in the company,³ but the liability of shareholders of a company is limited to their shares.⁴ The act of a partner, which is done to carry on in the usual way, business of the kind carried by the firm, binds the firm.⁵ Each partner is the agent of the firm for the purpose of carrying on the business of the firm.⁶ No shareholder of a company as such has any such power. A shareholder can contract with the company, a privilege which is denied, except to a restricted extent permitted by the Partnership Act⁷ to partners.

Company—How taxed.—A company being treated as a juristic person, is taxed as such, queerly enough at the maximum rate of tax, even though its income may be less than the taxable limit. This is rather unfair to joint stock

¹ I. T. Commissioner v. Lucknow Sugar Works, 1935 I. T. L. J. page 219.

² Section 4 of Indian Partnership Act IX of 1932.

³ Re George Nerman and Co. 1 Ch. 674, Indian Partnership Act IX of 1932.

⁴ Flit Croft 21 Ch. D. 533.

⁵ Section 19 of Partnership Act.

⁶ Section 18 of Partnership Act.

⁷ Section 13 of Partnership Act.

companies, but the disadvantage is small as compared to the advantages that accrue from incorporation in the form of limiting of the liability of shareholders, a certain amount of publicity in business, a corporate finance, and auditing of accounts according to law. There is another advantage in as much a shareholder can apply for compulsory winding up of the company.¹

The disadvantage arising from the assessment of a company at the highest rate of income is minimized by the provision by which, if a shareholder in a company who has received any dividend therefrom, satisfies the Income-tax Officer that the rate of income-tax applicable to the profits or gains of the company of the declaration of the dividend is greater than the rate applicable to his total income of the year in which such dividend was declared, 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 tax thereon) calculated at the difference between those rates.²

Supertax.—Supertax is imposed on companies on the profits over Rs. 50,000, regulated by Finance Act. No refund is allowed in case of supertax to shareholders.

“Firm”, “partner” and “partnership”.—Section 6 (A) was added by the Income-tax (Amendment) Act XXI of 1930. The terms referred to in section 6 (A) were defined in sections 239 to 248 of Indian Contract Act IX of 1872, Chapter XI of the Indian Contract Act, which dealt with the law relating to partnership, and covered sections 239 to 248, was repealed by the Indian Partnership Act IX of 1932, which Act was

¹ Section 166, Indian Companies Act 1913.

² Sec. 48 I. Tax Act.

passed to define and amend the law relating to partnership." We have therefore to look to the Indian Partnership Act, for the definition of the terms.

Sections 239 to 248 of Indian Contract Act IX of 1872 run as follows :—

Sec. 239.—"Partnership" is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them.

Persons who have entered into partnership with one another are called collectively a "firm".

Sec. 240.—A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

Sec. 241.—In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business is to be considered a loan within the meaning of the last preceding section.

Sec. 242.—No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking by a share of the profits of

such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Sec. 243.—No person, being a widow or child of a deceased partner or a trader and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall by reason only of such receipts, be deemed to be a partner of such trader or be subject to any liabilities incurred by him.

Sec. 244.—No person receiving, by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

Sec. 245.—A person who has, by words spoken or written or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as partner in such firm.

Sec. 246.—Any one consenting to allow himself to be represented as a partner is liable, as such, to third persons who on the faith thereof, give credit to the partnership.

Sec. 247.—A person who is under the age of majority according to the law to which he is subject may be admitted to the benefits of partnership, but cannot be made personally liable

for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Sec. 248.—A person who has been admitted to the benefits of partnership under the age of majority becomes, on attaining that age, liable for all obligations incurred by the partnership since he was admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership.

Sec. 249.—Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for any thing done before he became a partner.

The Indian Partnership Act IX of 1932 defines the terms as under:—

Sec. 4.—“Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually “partners” and collectively “a Firm,” and the name under which their business is carried on is called the “firm name.”

Sec. 5.—The relation of partnership arises from contract and not from status ;

and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.

Sec. 6.—In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Sec. 7.—Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will."

Sec. 8.—A person may become a partner with another person in particular adventures or undertakings.

Firm and Partnership.—The definition of partnership given in the Indian Partnership Act contains three elements: (1) an agreement by all persons concerned, (2) the agreement must be to share the profits and losses of a business and (3) the business must be carried on by all or any of the partners acting for all. The first point relates to the voluntary contractual nature of partnership, the second provides the motive for the Association, and the third shows that a person or persons who conduct the business does so as agents for all the persons in the group.

Lindley (pages 12 and 13) gives nineteen definitions of partnership in four languages. Those in French, German and Latin are consistent in defining partnership as a contract or agreement ; but the definitions of the English and American writers show the confusion in the use of the terms which has been carried into the English Act. The definitions given by the Indian Contract Act and by Pollock regard "partnership" as a relation between persons ; the New York Civil Code speaks of it as an association between two or more persons for a certain purpose ; Kent, Story and Watson see it as a contract between persons ; Dixon regards it as a group of persons between whom a certain relation exists ; and Rutherford's view may be any or all of the others.

The definition of "partnership" in the Indian Contract Act, section 239, was based upon Kent's definition. Pollock proposed an improvement upon the present Indian definition in order to meet the criticisms of Jessell, M. R. in *Pooley v. Dricer*,¹ who points out that certain elements in Kent's definition are subsidiary and the superfluous in a definition. The form adopted in the Partnership Act is that of Pollock, with one small change only. Pollock's definition speaks of the business as being "carried on by all or any of them on behalf of all" whereas the definition given in the Act, speaks of it as "carried on by all or any of them acting for all." The difference lies in the use of the phrase "acting for" instead of "on behalf of." The intention is to bring out more clearly the fundamental principle that the partners when carrying on the business of the firm are agents as well as principals. Further, the use of the words "on behalf of" seems to give some justification to the wrong view that a person who merely shares the

¹ 5 Ch. D. 472.

profits of the business is a partner, for inasmuch as such a person derives benefit from the business it may be said to be carried on on his behalf.

It is claimed that the definition includes all the essential elements contained in all the definitions, quoted by Lindley, the only exception being the element of the sharing of losses. This element may be regarded as consequential upon the sharing of profits, as a firm may be created in which losses are not contemplated or provided for by the sanguine partners.

A Hindu trading joint family is a status and is not therefore a partnership which arises by contract. The members of a joint Hindu family may however enter into a partnership with one another or with strangers. Those members of the joint family who have not entered into the contract will not be partners of the firm.¹

Since agreement to share the profits is necessary to constitute partnership, it follows therefore that a son who works in his father's business, does not thereby become a partner, though the business may be styled in the names of both father and son.² Generally, Hindu traders carry on business of different kinds under different names, while the owner of every branch is either one person or a joint Hindu family. Such a business does not become a partnership.

When the agreement between some persons is such as in substance constitutes a partnership, the mere fact that

¹ Anant Ram v. Channu, 25 All. 378; Gangiah v. Venkata Ramiah, 41 Mad. 454; Kharidarp Kafia Co. v. Daya Kishen, 43 All. 116; Mirza Mal Bhagwandas v. Rameshwar, 1929 A. L. J. 641; Gangiah v. Venkataramiah, 41 Mad. 454.

² Tulsidas Amaamal v. Lyon Lord and Co., 86 I. C. 834.

words are used which have a contrary meaning will not prevent the agreement being treated as one of partnership.¹

But where a deed of partnership is drawn up between the assessee and his major sons for avoiding income-tax and minor sons are not admitted to the benefit of partnership, and no capital is shown to have been contributed by the son to the partnership, it can be inferred that there is no partnership.²

A partnership cannot be formed by an association of a joint Hindu family with a firm.³

Business.—This word differentiates a partnership from co-ownership of property. Co-owners of a house, boat, or ship do not become partners. Similarly, two or more persons advancing a loan jointly do not become partners.⁴ But when property is employed in joint trade the case is different, and the property becomes partnership property.⁵

Share the Profit.—Sharing in the profit is an essential ingredient of partnership, though that by itself does not constitute partnership.⁶

Between them.—The sharing of profits to constitute a partnership must be among the partners. Hence, if two or more persons agree to work for profit, but to give the profit

¹ 1930 A. L. J. 1517; A. I. R. 1931 All. 225.

² *Abowath Brothers v. Commissioner of I. T. Burma*, 1935 I. T. L. J. page 45.

³ *In re Parbhu Lal Pearey Lal*, 1935 I. T. L. J. page 46.

⁴ *London Financial Assatan v. Kelh* (1884) 26 Ch. D. 107; 39 C.L.J. 537; *Helme v. Smith*, 7 Bing. 709.

⁵ *Vanamali Sathraju v. Pallan Raju*, 41 Mad. 939; *Hyder Ali v. Elahee*, 8 Cal. 104.

⁶ Section 6, Explanation 1 cited above.

to a third person, or to a charity, it is submitted, there can be no partnership.

A Magistrate of the second class specially empowered by the Local Government etc.—The words “specially empowered by the Local Government to try offence against this Act” were added in 1918. Cases under the Income-tax Act are of technical nature, and it was felt that Magistrates with insufficient experience should not try such cases.

“Person.”—The word person is not defined either in this Act or in the General Clauses Act. According to Webster, the word person means “a living self-conscious being, as distinct from an animal or a thing; a human being, a man, woman, or a child. It is submitted that it would be appropriate to define a person as an individual human being.

A minor or a lunatic is a person and special provision is made in the Income-tax Act for taxing such persons. If however, a minor has no guardian, who can be made liable under section 40 for the payment of income-tax, but has an income liable to tax *viz.*, as a singer or as trader, etc., he can be called upon to make a return of his income personally, and to pay the tax.¹

The word person includes any body of persons, corporate, or incorporate.²

Hindu undivided family.—A Hindu undivided family is counted a person for the purpose of income-tax and is treated as a unit for the purpose of taxation.³ But the term has not been defined in the Income-tax Act. We have to look to the various treaties on Hindu law and judicial

¹ Eup Huxley (1912), 1 Ch. 158; 7 Tax Cases 49 C. A.

² *In re* Ram Prasad, A. I. R. 1930 All. 389.

³ *In re* Bijoy Singh, 7 I. T. L. J. page 46 at 47; 6 I. T. C. 449 P. C.

decisions to find out the correct meaning of the term. "A Hindu joint family" is constituted of the following members, namely:—

- (1) Persons descended from a common male ancestor and related to one another as Sapindas;
- (2) Collateral relations descended from a common ancestor in the male line;
- (3) Persons adopted into the family;
- (4) The mother, the wives, and widows of the male members and unmarried daughters.¹

A restricted form of a Joint Hindu Family is what is called a coparcenary. "A coparcenary is a joint family comprising common male ancestor with his lineal descendant in the male line not more than three degrees remote from him, or of the last holder of a share of his property. A coparcener is a male related not more than three degrees from a direct ancestor who owned an estate or was entitled to a share therein."² A single male member living jointly with the widows of deceased coparceners constitutes a joint family. A Jain assessee is in the absence of a custom to the contrary governed by Hindu Law as to joint family.³

The Sapindas of a person include his male relations related to him directly or through a common ancestor as the case may be, in ascent or descent not more than seven degrees distant in the male line inclusive of himself and the relation

¹ Gour's Hindu Code, page 638.

² Gour, page 633.

³ Seth Nathusa Parsula Lal v. Commissioner of Income-tax U. P. and C. P.; 7 I. T. L. J. 1934, page 242.

concerned, his wife, daughter, and daughter's son, and the wives of his six descendants.

The joint and undivided family is the normal condition of Hindu society. A Hindu family is presumed to be joint. As such, it may be presumed that —

- (a) such family continues to remain joint until the contrary is shown;
- (b) where any property is shown to have been once joint family property, it remains joint until the contrary is shown;
- (c) all property acquired by or in the possession of a joint member is joint property ;
- (d) where there is a nucleus from which property may be acquired, any property acquired with its aid by a member is joint property.¹

All acquisitions made by the manager of a joint family in the name of any of its coparceners will be presumed to be made out of its fund and for its benefit.² In modern society, the presumption of jointness becomes weaker as the various members become more and more removed from the common ancestor.

There are two systems of inheritance among Hindus : one the Mitakshra, and the other Dayabhaga system. In the former, right of inheritance is determined by consanguinity, in the latter by the doctrine of religious efficacy. As a result of this, the Mitakshra recognizes two modes of devolution of property, viz., survivorship and succession, the

¹]Gour, page 683 (2).

² Gour, p. 694, para. 125 (1).

Dayabhaga recognizes only one, *viz.*, succession. The rule of survivorship applies to joint family property, the rule of succession to separate property of the member. Dayabhaga does not recognise survivorship even in case of joint family property, so that every member of a joint family governed by Dayabhaga Law holds his share in quasi-severalty, so that it passes on his death to his heirs as if he was its absolute owner, and does not pass to the other members of the joint family by survivorship.

A convert to Hinduism, or a son born to a Hindu by a non-Hindu wife who professes Hindu religion will be governed by Hindu Law.¹

Over and above joint family property, it is possible that the individual members of a joint Hindu family may have separate property or separate income with which the joint family has no concern.

The following properties constitute the self-acquisition of a member of a joint family :—

- (a) Property acquired by inheritance from a lineal ancestor more than three degrees remote or from a collateral or from or through a female relation;
- (b) Property acquired by gift or device ;
- (c) Property acquired without detriment to the joint estate ;
- (d) Property which by its nature or extent or the mode of its acquisition is incapable of joint ownership.²

¹ Abraham v. Abraham, 9 I. A. 190; Jowala v. Dharam, 10 M. I. A. 511 at 533; Kusum Kumari v. Kusum Kumari, 50 A. I. 58; 2 Pat. 230; Palaniappa Chetty v. Alayan Chetty, 48 I. A. 539.

² Gour, page 610, para 110 (1).

After the passing of Hindu Gains of Learning Act III of 1930 it has been provided as follows :—

Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of—

- (a) his learning having been, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of joint funds of his family, or with the aid of the funds of any member thereof, or
- (b) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of his family, or by the funds of any member thereof.¹

The result is, that earnings of all professional men and Government servants etc. will be treated not as income of joint family, but the separate income of the individual concerned, unless it is thrown into common stock, in a manner so as to make it inseparable from the income of the joint family.

It would appear that the separate income of the individual members of a joint Hindu family cannot be taken into account in assessing the family as such.

Stridhan.—In Hindu families, females own certain property, which may yield income. This property is called Stridhan and has peculiar characteristics of its own, as regards devolution and succession. Income-tax authorities are concerned only with the fact that the property is the separate

¹ Act No. XXX of 1930.

property of the ladies concerned, and is not joint family property, and cannot be taken into account in the assessment of joint family.

But at times it is very difficult to ascertain whether a particular property or a sum of money standing in the name of a female is her Stridhan, or is really the property of the joint family and the name of the female concerned is only entered benami.

Benami.—Benami transactions were and are even now very common in India specially, among Hindus, and money is deposited and property acquired in the name of female members of joint Hindu families, not because the money or the property is the Stridhan of the woman concerned, but in order to save the property from creditors, or from other liabilities against the family. A person does not acquire any interest in the property, only because it stands in his name and in each case the real nature of the ownership is to be ascertained. All acquisitions made by the manager of a joint family in the name of any of its coparceners will be presumed to be made out of its funds for its benefit.¹ With this exception, there is no presumption in favour of benami, and a person who asserts benami must prove it. In each case, the Income-tax Officer has to ascertain the true owner and make assessment accordingly.

Advancement.—The doctrine of advancement has no application in India, and there is no presumption that a property purchased by a Hindu or Mohammadan in the name of his wife or child or mistress is by way of advancement. The intention has to be judged from the facts of each case.

¹ Gour's Hindu Code, para 125, page 604.

Partition.—It is always a question of fact whether a Hindu family is joint or separate and the I. T. C. has to decide this question of fact in each case. A Hindu family may be divided by a deed of partition, by suit or even by an oral partition accompanied by actual division of property and separation in mess. The original ingredients of a joint Hindu family were ownership of joint property, and jointness in mess and worship. The element of worship no longer finds a place in the vast majority of Hindu families, and therefore in cases where the separation is not proved by any documentary evidence, separate mess and separate enjoyment of property must be proved to constitute separation. Separate residence and separate mess are indicia by which the joint character or otherwise of a family may be ascertained, but they are not conclusive, and may even, in case of wealthy families, be of small evidentiary value.¹ Members of a joint family may separate but may continue to hold property jointly, and may even carry on business jointly, dividing the income of the property or business according to the shares. In such a case the business carried on jointly will be treated as a business of a firm or Association of individuals and will be taxed as such and not as that of a joint family.

Impartible Estate.—An impartible estate is the property of one member of the family, and the fact that other members of the family have a right of maintenance out of the income of the estate will not make the assessment as of a joint Hindu family.²

¹ *In re Vijayananda Gajhatiraj Maharaj Kumar of Vizianagaram*, 1934 I. T. L. J. page 49; 1934 A. L. J. page 1237.

² *Commissioner of Income-Tax Madras v. Doraiswami Aiyangar*, 1 I. T. C. 244; 46 Mad. 673.

Under section 3 of the Act, assessable income is to be computed with reference to a fixed period which is known as the "previous year." This fixed accounting period, the income, profits and gains of which alone are taken into consideration in making an assessment, is treated as isolated, without any consideration of what went before or what came after. The definition of the phrase "previous year" in the Act of 1918 restricted the accounting period to a period of 12 calendar months. The period of 12 calendar months was the period ending on the 31st day of March next preceding the year for which the assessment was to be made, but the assessee was given an option of adopting a year of 12 calendar months ending on a date other than the 31st of March if that was the date up to which his accounts were made up. This gave rise to difficulties in the case of certain communities, whose commercial year is not necessarily a calendar year, but is a period which, expressed in calendar months, varies from year to year, and in one year may be slightly over and in another slightly under 12 months. Again, under the definition in the Act of 1918, any year which was adopted in place of the financial year had to terminate at some period within the previous financial year, and as there are numerous cases where the commercial year terminates in the month of April, the return and accounts on which the assessment was based in such cases related to a period more than 12 months prior to the date of assessment. While the definition of the phrase in the Act of 1918 has been repeated practically without alteration in clause (a) of this sub-section, clause (b) is a new provision providing for the difficulties referred to above. Under this clause the Central Board of Revenue or the Commissioner of Income-tax in a province, if authorised by the Central Board of Revenue, may determine as the "previous year"

a commercial year which may be slightly over or slightly under 12 months, and which may terminate on a date subsequent to the end of previous financial year. The Central Board of Revenue has authorised the Commissioner of Income-tax in each province to determine as the "previous year" in the case of any person, business or company, or class of persons, business or company :

(a) a commercial year which may consist of more or less than 12 months, provided that no commercial year which may extend to less than 11 or more than 13 calendar months in any one year shall be so determined ; and

(b) a commercial year terminating after the end of the previous financial year, provided that no commercial year terminating later than one month after the end of the previous financial year, shall be so determined.

Where the commissioner desires that a "previous year" should be recognised which does not come within his powers of sanction as stated above, he must obtain the orders of the Central Board of Revenue.

Income-tax Officers are, therefore, debarred from treating as a "previous year" any period which does not come within the definition in clause (a) unless such "previous year" has been sanctioned either by the Income-tax Commissioner or the Central Board of Revenue.

Where, however, the assessee has already exercised his option under the substantive part of sub-clause (a) of clause (11) and is seeking to change his previous year for the second time, the proviso to the sub-clause in question comes into operation and it is open to the Income-tax Officer under the proviso to impose conditions involving an assessment

otherwise than in accordance with the normal requirements of the Act. In such a case, the condition which the Income-tax Officer may have occasion to impose may be a condition that the assessment should be made on the income of a period exceeding 12 months. But should occasion arise to require assessment on the income of a period of less than 12 months, the imposition of a condition in this sense would equally be within the Income-tax Officer's competence.

When the condition imposed under the above proviso means an assessment on the income of a period in excess of 12 months—say X months—the rate of tax to be applied to the aggregate income may be stipulated to be the rate applicable to a total income arrived at by applying the formula $12/X$ to the aggregate income. Even when X is less than 12 months, the above formula may be stipulated to be applied.

As regards super-tax, the condition imposed under the above proviso might require that it may be computed as follows. In the first place, the formula already mentioned, $12/X$ should be applied to the income for the period under assessment. On the resulting income, super-tax should be calculated in the ordinary way by allowing the usual deduction of Rs. 30,000 or Rs. 50,000 or Rs. 75,000, as the case may be. The total super-tax thus arrived at should then be multiplied by $X/12$ and the result will be the amount of super-tax leviable.

As stated above, under the proviso to sub clause (a) of clause (11) of section 2, an assessee who has, after the 31st March 1922, once exercised the option of selecting as his "previous year" a year terminating on a date other than the 31st day of March within the previous financial year, cannot again exercise that option except with the consent of the Income tax Officer, and upon such conditions as he may think fit. Income-tax Officers in dealing with such cases, and Commissioners in dealing with such cases, and Commissioner in dealing with cases under subclause (b) of clause (11) of the above section 2, should take steps to secure that the changing over from one previous year to another shall not result in any loss of revenue either because any loss of income, profits or gains which, but for the change in the accounting period, would not have come under assessment is, by so doing, brought thereunder, or otherwise. The convenience of an assessee in this matter must be studied so far as possible, as it is desirable that the accounting period

for income-tax purposes should be the same as the accounting period according to which an assessee makes up his accounts for the purpose of his business, but in the actual year of change, conditions should be laid down sufficient to secure that the substitution of one year for another shall not result in any income, profits or gains of an assessee escaping assessment.¹

If an assessee closes his accounts on different dates for different businesses or different sections of the same business, or different sources of income, his income should be calculated separately for each business, section of business or source, according to the accounting year adopted for it and the aggregate of the incomes thus computed should be treated as the income of the previous year. Each of the years of which the income is thus added together must, of course, satisfy the definition of 'previous year' in section 2 (11) of the Act with reference to the same year of assessment.

If an assessee for some special reason closes his accounts on a particular occasion on the date different from—usually later than—that which he usually adopts, ordinary proportionate profits of 12 months out of the say 14 or 15 months for which the accounts are closed should be taken for the current assessment, and the balance of profits for the remaining 2 or 3 months should be left over to be included in the next year's assessment. In special cases, when the Income-tax Officer has reason to believe that the temporary extension of the accounting period has been resorted to by the assessee with some ulterior motive he may use the discretion given to him by the proviso to section 13 of the Act.

Where an Income-tax Officer grants permission to an assessee to change his accounting period, he should record the fact clearly in his assessment order, stating in detail the nature of the change permitted, and the conditions on which permission is granted.²

The Atba-e-Malak Badar community of Nagpur compute a year which is 10 or 15 days shorter than the calendar year. For the purposes of assessment, the Central Board

¹ I. T. Manual, para 6, sub-clauses (iv) to (vii).

² I. T. Manual, para. 6, pages 146-149.

of Revenue determined the period of 2 Abidi years as previous year. It was held, that the determination did not contravene any provision of law (2) (11) (b) and was, therefore, legal.

Held, also, that sums paid to members of the community employed in shops who were owners of property were not 'salaries' and were not, therefore, deductible as such from assessable income.¹

The assessee firm commenced business on 18th April 1923. In April 1924, the Income-tax Officer required the firm to furnish a return of its total income during the previous year, i.e., during the 12 months ending the 31st March 1924, the firm, instead of declaring its profits for 11 months and 13 days ending 31st March 1924, submitted a statement of profits for full 12 months up to 17th April 1924 and contended that it was not liable to pay income-tax for the year 1924-25 on the ground that the business had not been in existence for a complete year before the 1st April 1924. The Income-tax authorities, acting in accordance with the provisions of section 2 (1) (b) of the Act, accepted as the accounting period the time from 1st April 1923 to 17th April 1924.

Held, that the previous year so determined was justified by the Central Board of Revenue instructions and that the assessment was entirely legal.²

First Assessment.—It is not necessary that on the first occasion that a person is assessed to Income-tax, the

¹ Maulana M. E. R. Malak v. Commissioner of Income-tax C. P. and Berar, 3 I. T. C. 468.

² Messrs. Nanak Chand Fatehchand v. The Commissioner of Income-tax Punjab, 2 I. T. C. 167; A. I. R. 1926 Lahore 42.

previous year should consist of at least 12 months as there is nothing in the Act which requires that an assessee should have been in existence throughout the 12 months of the previous year.¹ On the other hand, if an assessee for some reason closes his account on a date different from that which he has previously adopted the Income-tax Officer may either take the profits of the 12 months out of the 14 or 15 months for which the accounts are made the remaining months to be included in the coming year's assessment or he may take the whole period as previous year and make assessment accordingly. Thus the determination of 23 months as previous year was held to be justified.²

Principal officer.—Income tax Officers should treat as the "Principal Officer" of a local authority or company or other public body or association in the first instance the officials specified in clause (a); it is only in cases where the Income-tax Officer has no information regarding the persons who discharge the functions of the officers mentioned in clause (a) or where such persons cannot be found, that he should use the powers conferred by clause (b) of treating as the principal officer any other person connected with the company, public body or association.³

Trading operations of Indian States and Dominion Governments.—Any trade or business in British India carried on by the Governments of Indian States or of any part of the British Empire, other than the Government of India or a Local Government, and the property occupied and goods owned in British India for the purpose of such business are, under the provisions of the Government Trading Taxation Act (III of 1926), liable to taxation under the Indian Income-tax Act in the same manner and to the same extent as in a like case a company would

¹ Manakchand Fatehchand, 2 I. T. C. 167; 7 Lah. 223 A.I.R. 1926 Lah. 421.

² Maulana M. E. R. Malak, 3 I. T. C. 468; also A. I. R. 1926 Lah. 421; 2 I. T. C. 167.

³ I. T. Manual, para. 7, page 149.

be. Before attempting to assess the income of such Government, the Income-tax Officer should serve a notice under section 2 (12) (b) of the Indian Income-tax Act upon some representative of the said Government in British India declaring his intention of treating such representative as the principal officer of such Government.¹

“**Local authority.**”—“Local authority” a phrase used in section 2(12), 4 (3) (iii), 7 and 21, is defined in section 3 (28) of the General Clauses Act, 1897 as “a municipal committee, district board, body of Port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of, a municipal or local fund.”²

Public servant.—This definition is of importance for the purposes of section 54 of the Act. The definition of the phrase in the Indian Penal Code contains the following :—

“The words ‘public servant’ denote a person falling under any of the descriptions hereinafter following, namely :

Ninth.—Every Officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty ;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any

¹ I. T. Manual, para. 5.

² I. T. Manual, page 149, para. 8.

secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.

Explanation.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words ‘public servant’ occur they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.¹

“Registered firm”.—R. 2. Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, for the purposes of clause (14) of section 2 of the Indian Income-tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income-tax Officer the particulars contained in the said instrument on application in this behalf made by the partners or by any of them.

Such application shall be made—

- (a) before the income of the firm is assessed for any year under section 23, or
- (b) if no part of the income of the firm has been assessed for any year under section 23, before the income of the firm is assessed under section 34, or
- (c) with the permission of the Assistant Commissioner hearing an appeal under section 30, before the assessment is confirmed, reduced, enhanced, or annulled, or, if the Assistant Commissioner sets aside the assessment and directs the Income-tax Officer to make a fresh assessment, before such fresh assessment is made.

R. 3. The application referred to in rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof;

¹ I. T. Manual, para. 9, page 149.

provided that if the Income-tax Officer is satisfied that for some sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by one of the partners to be a correct copy, and in such case the application shall be accompanied by a duplicate copy.

Form of application for registration of a firm under section 2 (14) of the Indian Income-tax Act, 1922.

To

THE INCOME-TAX OFFICER,

Dated.....19.....

I/We.....beg to apply for the registration of my/our firm under section 2 (14) of the Indian Income-tax Act, 1922.

2. The original/ A certified copy of the instrument of partnership under which the firm is constituted specifying the individual shares of the partners together with a copy/duplicate copy is enclosed. The prescribed particulars are given below.

3. I/We do hereby certify that the profits of the current year will be actually divided or credited in accordance with the shares shown in this partnership deed.

Signature.....

Address.....

.....

Name and address of the firm.	Names of the partners in the firm with the share of each in the business.	Date on which instrument of partnership was executed.	Date, if any, on which the instrument of partnership was last registered in the Income-tax Officer's Office.	Remarks.

I/We.....do hereby certify that the information given above is correct.

Signature (s).....

R. 4. (1) On the production of the original instrument of partnership or on the acceptance by the Income-tax Officer of certified copy thereof, the Income-tax Officer shall enter in writing at the foot of the instrument or copy, as the case may be, the following certificate, namely:—

“This instrument of partnership (or this certified copy of an instrument of partnership) has this day been registered with me, the Income-tax Officer, for.....in the province of.....under clause (14) of section 2 of the Indian Income-tax Act, 1922. This certificate of registration has effect from theday of April 19.....up to the 31st day of March 19.....

(2) The certificate shall be signed and dated by the Income-tax Officer who shall thereupon return to the applicant the instrument of partnership or the certified copy thereof, as the case may be, and shall retain the copy or duplicate copy thereof.

R. 5. The certificate of registration granted under rule 4 shall have effect from the date of registration.

R. 6. A certificate of registration granted under rule 4 shall have effect up to the end of the financial year in which it is granted but shall be renewed by the Income-tax Officer from year to year on application made to him in that behalf and accompanied by a certificate signed by one of the partners of the firm that the constitution of the firm as specified in the instrument of partnership remains unaltered. Such application shall be made within the time and subject to the conditions, if any, which are specified in clause (a), clause (b), or clause (c), as the case may be, of rule 2.¹

Rules 2 to 6 prescribe the method of registration of a firm. A firm to be registered must be constituted under an instrument of partnership which definitely specifies the individual shares of the partners in the profits of the firm. The deed of partnership to be registered both for purposes of assessment to income-tax and supertax is that in force in the year in which the assessment is made. An application

¹ I. T. Manual, Rules 2 to 6, pages 77-79.

for registration may be made at any time before the assessment of the income of the firm is made but it is desirable that the application should accompany the return under section 22 (2) of the Act. If an application is made after the assessment of the firm, it should be returned to the person presenting it as out of time. Even if such an application is accepted it can have no effect on the assessment for that year, vide decision in the Allahabad High Court Case No. 223 of 1923, in the matter of Lallamal Hardeo Dass Cotton Spinning Mill Company of Hathras.¹ The words "no part of the income of the firm has been assessed" in rule 2 (b) refer to cases in which the whole of the income of the person in question had escaped the attention of the Income-tax Department altogether until proceedings were started under section 34. They do not apply to case in which proceedings have been taken under section 23 in respect of the income of any person and owing to that person's concealing part of his income he has been declared not liable to tax.² Here and wherever else in the Act or Rules there is nothing repugnant in the context the words "assess" and "assessment" evidently refer to the process of determining the amount of profit or loss made by a person in the previous year and not to the process of levying tax or declaring that no tax is payable which as section 23 shows is a process distinct from and subsequent to assessment although the word "assessee" is defined in sub-section 2 of section 2 as a person by whom tax is payable. The distinction between a registered and unregistered firm for the purposes of this Act is :—

(1) Income-tax is assessed upon the profits of a registered firm at the maximum rate whatever the amount of the profits of the registered

¹ I Srinivasan Tax Cases, page 226.

² Hussainbhai Bohari v. Commissioner of Income-tax, 2 I. T. C. 43.

firm may be (see Finance Act); and a member of such a registered firm, on satisfying the Income-tax Officer that such maximum rate is higher than the rate applicable to his "total income," or that his income is below the minimum chargeable with income-tax, may get a refund on his share of those profits calculated at the difference between the two rates, at the rate at which income-tax has been levied as the case may be (see section 48 (2)), such share of the profits being included in the "total income" of such member for the purpose of determining the rate applicable (see section 16 (1)). In the case of an unregistered firm income-tax is levied on the income of the firm at a rate graded according to the profits of the firm as if it were an individual (see Finance Act); a member of such a firm is not entitled to any refund, but his share of the profits of the firm is included in his "total income" for the purpose of determining the rate at which he shall pay income-tax on any other income (see section 16 (1)).

The profits of a registered firm are liable to tax at the maximum rate even if they are less than Rs. 1,000, while an unregistered firm is not liable to income-tax if its profits in any one year are less than Rs. 1,000. But where the profits of an unregistered firm are not assessed to income-tax, they are liable to tax in the hands of the individual members of the firm, that is, they are included in the assessable income of the individual member (see Finance Act and section 14 (2) (b));

(2) A registered firm is not liable to super-tax, the share of an individual member, in the profits of such a firm being included in the income of each individual member for the purposes of super-tax. An unregistered firm is, however, liable to super-tax (like an individual) on that amount of the profits of the firm which is in excess of Rs. 30,000 (see Finance Act and section 55 of the Income-tax Act). Super-tax is not payable by an individual having a share in an unregistered firm in respect of the profits of the unregistered firm, except, in case where the profits of the unregistered firm have not been assessed to super-tax (see section 55 proviso). A firm cannot legally enter into partnership with another firm, vide decision of the Allahabad High Court in *Jai Dayal Madan Gopal v. Commissioner of I. T., U. P.* It does not, however, follow that because a firm is not a partner in another firm what is described as its share in the profits of such firm is not its income. A firm in which

another firm purports to be a partner cannot be legally registered for income-tax purposes."

It has been held that under the Indian Contract Act, 1872 (IX of 1872), a minor cannot become a partner in a firm. But he may be admitted to the benefits of partnership in a firm, with the consent of all the partners for the time being. A minor who purports to be a partner in a firm should be treated exactly like a minor who has been admitted to the benefits of partnership in a firm. A minor who has been admitted to the benefits of a partnership has a right to such share in the property and the profits of the firm as may be agreed upon—not between him and the partners; and his share in the property of the firm is liable for the acts of the firm, but he is not personally liable. Provided that there are at least two persons competent to contract among the members of the firm, the fact that there is also a minor who purports to be a member of the firm, or who has been admitted to the benefits of the partnership in the firm does not justify the Income-tax Officer in refusing to register the firm. In such cases the minor has an ascertainable share in the property and the profits of the firm. His share cannot be "ignored," or attributed to the other partners. The application to his share in the profits of the firm of the provisions of sub-section (2) (b) of section 14, and sub-section (1) of section 16 presents no difficulties, whether the firm is registered or not. The fact that a minor cannot have the status of a member of a registered firm does not take away his right to a refund. Section 48 (2) specifically provides for such a refund, and a claim may be made on his behalf. Similarly, a claim is admissible on behalf of the minor to a set off under sub-section (2) of section 24 in respect of his share in loss sustained by a firm.¹

History.—There was no provision in the Act of 1886 for registration of firms and no distinction was made between a registered and an unregistered firm. Nor was any definition of a registered firm to be found in the Act of 1918. Section 14, however, had a proviso as follows: "Provided that where the assessee is a company or a firm constituted

¹ I. T. Manual, para 10, pages 150-52.

under a registered instrument of partnership specifying the individual shares of partners.....the Income-tax shall be levied at the maximum rate." Provision was made in Section 37 of the Act of 1918 for refunds to partners of such firms if their individual incomes justified a refund. In the Act of 1922 a registered firm was defined as follows:—

“Registered firm” means a firm constituted under an instrument of partnership specifying the individual shares of the partners of which the prescribed particulars have been registered with the Income-tax Officer in the prescribed form. The definition was amended by the Income-tax (Amendment) Act XXI of 1930, when section 26-A was added.

Till November 1926, the application for registration had to be made before the date on which the return was due under section 22, if the application was made after that date it was ineffective, and assessment was made as if the firm was an unregistered firm. In November 1926, rule 2 was amended and provided for the application for registration being given at any time before assessment. Rule 2 was again amended in 1928, and it has been made clear as to when an application for registration can be made.

Three things are necessary in order to constitute a registered firm:—

- (1) Existence of a firm.
- (2) The firm must be constituted under an instrument of partnership specifying the individual shares of the partners.
- (3) Application must have been made to the I.T.O. setting forth the prescribed particulars in the prescribed manner for registration, and registered according to law.

Instrument of Partnership.—A firm to be registered must be constituted under a deed of partnership definitely specifying the shares of individual partners in the firm. The partnership deed must be in force at the time of application for registration. A firm cannot be registered on the basis of a deed of partnership the term of which has expired.¹ The Income-tax Officer cannot refuse to register a firm when all the formalities have been complied with.²

Where a partnership was entered into, by a deed dated August 1923 for 3 years and continued under verbal agreement after the expiry of 3 years' period an application for registration of partnership was held to have been rightly refused.

It was, further, held that it was immaterial if this period of 3 years expired after some months of the account year had passed.³

Assessees, three brothers, lived together with their mother and each month Rs. 530 were drawn from shops, each brother taking Rs. 50 for personal expenses and Rs. 300 for house-hold, leaving the rest in the business. Each had a one-third share in the shop. They kept no accounts, nor separate ledgers for themselves and had no intention to divide their profits. It was held, they could be declared "registered firm" under section 2 (14) of the Act.⁴

¹ The Commissioner of Inland Revenue v. Krishna Aiyer & Sons, A. I. R. 1929 Mad. 67; 3 I. T. C. 236.

² Bulchand Keshawdas, A.I.R. 1930 Sind 301; Tikabhi, A.I.R. 1931 Nag. 6.

³ M. V. Krishna Aiyer & Sons v. Commissioner of Income-tax Madras, 3 I. T. C. 286; A. I. R. 1929 Mad. 36.

⁴ Kikabhai & others v. The Commissioner of Income-tax C. P., 4 I. T. C. 178; A. I. R. 1930 Nag.

A certain firm with three partners sought to be registered as a firm under section 2 (14) of the Act and applied for registration, basing the application on certain letters that had passed between the partners, containing their several shares and other stipulations. The senior partner was to be the capitalist with a share of 7 annas in the rupee while the two junior partners were to be working partners, with a share of 5 and 4 annas each. The Income-tax Officer and Assistant Commissioner refused to register these documents as not being an instrument of partnership, and because the reply of the senior partner did not purport to accept all the terms proposed by the junior partners. It was held, that it was erroneous to have refused registration on the above ground and that the proper course was to have the doubtful points in the letters cleared up by another letter from the Junior partner to the Senior or from the latter to the former and that the application, as amended by this further document (letter) was the same application, and made in good time on the date on which it was originally made.¹

Assessees carrying on business as joint Hindu family were assessed as such. After notice requiring a return of income, the assessees applied for registration as firm within section 2 (14) of the Act, producing a document and alleging a division of joint family and a determination of their respective shares and a consequent partnership (the deed produced being a deed of partnership). They were required by the Income-tax Officer to produce evidence of the *bona fides* of this document, some evidence to show that the joint family had been dissolved. No such evidence was forthcoming. It was held, that the Income-tax Officer had the power to call

¹ Messrs. Haridas Premji v. The Commissioner of Income-tax Bengal, 4 I. T. C. 47; A. I. R. 1932 Cal. 409.

for evidence as to the reality of the instrument produced and to refuse registration if such evidence was not forthcoming.¹

Where the assessee, who had invested a large sum of money inherited by her from her husband in certain shares which produced a large income, put in for registration of a firm, consisting herself and her three minor children, an instrument of alleged partnership, which evidenced only the profits divisible between her and her children in certain shares, without stating the nature of business, its assets and the source of profits, whereupon the Income-tax authorities refused registration under Rule 266 of the Income-tax Rules. It was held, that registration was rightly refused, as there was no partnership established under section 239 Contract Act (IX of 1872) in view of the facts stated.²

Where the firm did not apply for registration as prescribed by statutory rules prior to the last day by which its return of income for the year was due, and even the instrument of partnership also came into existence and was executed after the above-mentioned date, it was held, that the assessee objectors could not be treated as "registered firm."³

Where an instrument of partnership executed by three out of four partners, and registered under the Indian Registration Act was presented to the Income-tax authorities for registration of the firm under Income-tax Act and the Income-tax Department contended that the instrument being

¹ *In re Messrs. Bisheshwarlal Brijlal*, 4 I. T. C. 365; A. I. R. 1930 Cal. 449 S. B.

² *In re Sookinaboo Salebhooy*, 6 I. T. C. 13; A. I. R. 1932 Bom. 116.

³ *In re Lalla Mal Hardeo Das*, 1 I. T. C. 766; A. I. R. 1924 All, 137.

incomplete, as it was not executed by the fourth partner, could not be accepted under the Income-tax Act for registration of the firm, under section 2 (14), it was held that it was not impossible that a firm should be constituted under such an agreement, although it was not executed by all the partners and that if before her death, the fourth partner had assented to the instrument and when it was put forward for registration under the Registration Act, it was put forward by her along with others to be registered, it was such a document as might be admitted to registration under the Income-tax Act, it was held, further, that section 2 (14) and Rules thereunder do not require that a complete instrument only, which is such as does not require supplementation by other evidence is the only one intended to be admitted for registration under the Income-tax Act.¹

Assesseees were assessed for 18 years as an undivided Hindu family on profits of business carried on by them. The family was governed by Mitakshara Law.

In 1929-30, in the course of assessment proceedings, they applied to be registered as firm under R. 2 of Statutory Rules under the Income-tax Act. They filed a deed of partnership. Applying section 25-A, notice was issued to them in response to which, stating that there had been "no legal partition by metes and bounds," they contended that section 25-A did not apply. The registration sought for was refused and they were assessed as before as joint Hindu family. It was held, that there was no separation and that the assessment was legal.

¹ *In re Ramlal Murlidhar*, 5 I. T. C. 150 S. B.; A. I. R. 1931 Cal, 682.

Held, further, that the mere execution of a formal deed of partition does not *ipso facto* discharge the onus of those who wish to show that the Hindu family to which they belong has separated.¹

Where a registered firm has escaped assessment in respect of a part of the profits, and proceedings against it under section 34 have failed for lack of jurisdiction, fresh proceedings being time barred, held that proceedings under section 34 may, in such a case, be taken against a partner and tax may be levied upon him.²

Application for registration not signed by parties.—It is essential that an application for registration should be signed by at least one of the partners of the firm. An application made in that behalf by an agent of the partners would not comply with the statutory rules prescribing the manner in which registration is to be effected and the registration by the Income-tax Officer of such an application would be *ultra vires* and void.³

Mistake of Income-tax Officer.—The mere mistake of an Income-tax Officer in accepting an application for registration made by a firm after the date prescribed for return of income would not make the objectors a 'registered firm' if they did not come within the definition. A formal certificate of registration issued by the Income-tax Officer in flat defiance of rules would not bind the Income-tax

¹ *In re Ghanshayam Das Ram Kumar*, 6 I. T. C. 198.

² *Neemchand Daga v. The Commissioner of Income-tax Bengal*, 5 I. T. C. 206; A. I. R. 1931 Cal. 636.

³ *C. F. A. C. T. Machiappa Chettiar v. Secretary of State*, 7 I. T. L. J. page 339; 7 I. T. C. 1; A. I. R. 1933, page 229.

authorities and carry with it a right of exemption from super-tax.

Joint Hindu Family and registration as a firm.—But the Income-tax Officer must be satisfied that there is in reality a firm of which registration is applied for.¹

A certificate of registration granted for the coming financial year in December of the preceding year constitutes a valid certificate for that year, and the firm must be regarded as registered for the year to which it relates.² But where an application for registration is made within time, but with insufficient particulars and application for amendment is made, the amendment should be held to relate back and the amended application should be held to have been made on the date of the filing of the original application.³

A member of joint Hindu family cannot get the Hindu joint family registered as a firm, and if any application for registration is made by a member of a joint Hindu family, the Income-tax Officer can insist on dissolution of the joint family before registration.⁴ A joint Hindu family is not dissolved merely by the execution of the deed requiring the particulars required by law relating to registration of firms for income-tax purposes.⁵ Individual members or branches of a divided Hindu family carrying on business jointly are to be taxed as an unregistered firm.⁶

¹ Haridas Premji, A. I. R. 1932 Cal. 409; *in re* Lattu Shah, A. I. R. 1932 Lab. 515; *in re* Bai Sakinabanoo, A. I. R. 1932 Bom. 116.

² *In re* Husainbhai, A. I. R. 1925 Nag. 415; 2 I. T. C. 43.

³ Haridas Banerji, A. I. R. 1932 Cal. 409.

⁴ *In re* Bisheshwar Lal Brij Lal, A. I. R. 1930 Cal. 449.

⁵ *In re* Ghanshyam Das Ramkumar, 6 I. T. C. 198.

⁶ Gangasager Anand Mohan Shaha, A. I. R. 1930 Cal. 178,

Where members of a joint Hindu family, alleging partition and partnership, produced a partnership deed and sought registration as firm on basis thereof, and the Income-tax Officer, on enquiry, found the alleged partnership and division as against facts: it was held, that section 25-A covered the case and that it was open to the Income-tax Officer to find against the declaration contained in a partnership deed and reiterated by the parties before him that a joint Hindu family still exists.¹

The mere execution of a deed purporting to be a deed of partnership by which members of a joint Hindu family agree that henceforth the business carried on by them should be carried on as a partnership, does not *ipso facto* discharge the onus upon those who wish to show that the Hindu family to which they belong has so separated.²

A certain firm carried on business as a joint Hindu family. They purported to have effected partition by means of a deed, under which they ceased to carry on business as a joint Hindu family and constituted themselves a partnership with specified shares. They claimed assessment as partners of a registered firm.

Held, that they must be assessed on such income, profits and gains of a Hindu undivided family, the liability for payment thereof falling on the assessee, the registered firm, which is the successor to the joint family which has ceased to carry on the business.

¹ Messrs. Jattu Shah Nathu Shah v. Commissioner of Income-tax Punjab, 6 I. T. C. 182; A. I. R. 1932 Lahore 575.

² Ghansyam Das Ram Kumar v. Commissioner of Income-tax Behar, 7 I. T. L. J. page 315.

Held, also, that the word "discontinuance" under section 44 may mean total abandonment or extinction, or self-extinction for the purpose of re-construction under another form.

Held, further, that section 26 applies to the ascertainment of the assessee within the meaning of section 2 at the time when assessment is made and does not affect the rate or the period in respect of which profits have to be computed.¹

Change in partnership after registration and before assessment.—If there is a change in the constitution of a firm after its registration and before assessment, a question will arise whether the old firm or the altered one should be treated as assessee. If the change in the partnership is such that under its terms the change would automatically amount to a dissolution of partnership, the new firm should be treated as a separate assessee, asked to furnish a return of its income and to apply for registration if so desired. Section 26 will govern the liabilities of the new firm in respect of income of the old firm.

It is not necessary that profits should have been actually divided among partners in order that a registered firm should be taxed as such. The income shall be deemed to have accrued to each partner as provided in the deed and will be taxed as such.²

Husband and Wife.—A partnership between the husband and wife is a valid partnership, even though the husband may have the major part of the management in his hands. But in case the finding of the Income-tax Officer is that

¹ Messrs. Mhal Chand Kishori Lal v. Commissioner of Income-tax, U. P., 2 I. T. C. 338; 1927 A. L. J. 366.

² Gaunt v. Inland Revenue, 8 Tax Cases, p. 111.

the partnership is a bogus one, he can refuse to recognize the firm.¹

Firm—residence of,—The residence of a corporation or a firm depends not upon the place where the partners reside, but upon where the central control resides, that being the place where the central business is carried on.²

Cases.—Assessee was a partner of a firm which was registered in Burma. He resided at Karaikudi. On being assessed to super-tax, he objected to registration of the firm on the ground that on the date of registration, the other partner had died. He was allowed opportunity to get the registration of the firm cancelled by the Burma authorities but the latter refused to cancel registration.

Held, that, in the circumstances stated, the firm must be treated as registered and that assessment of the assessee to super-tax was, therefore, proper.³

The assessee firm, already a registered one, applied for renewal on 16th December 1922 and was granted a certificate of registration to have "effect from 1st April 1923". It was assessed to super-tax for the year 1923-24. The Assistant Commissioner took the view that the certificate granted ceased to have effect after 31st March 1923, as it was applied for and granted before 1st April 1923, and that the assessee "did not apply for registration for the account year." The Commissioner also took the same view. Held, on reference to the High Court, that the presentation of application for renewal

¹ *In re Ambalal Sarbhai*, 1 I. T. C. 234.

² *De Eers Consolidated Mens Ltd. v. Hove*, 1906 A. C. 455 at 458; Halsbury's Laws of England, page 645, para. 1302.

³ *A. Ct. Naciappa Chettiar v. Commissioner of Income-tax Madras*, 5 I. T. C. 375; A. I. R. 1933 Rang. 229.

of registration certificate before 1st April, was not improper, that there was no ambiguity that the certificate was issued for 1923-24, in the face of the express statement therein that it was to have effect from 1st day of June 1923 and that no effect was to be given to the certificate between 16th December 1922 and 31st March, 1923 and that consequently, the firm was not liable to pay super-tax.

Held, also, that the effect of Rules 5 and 6 is not to render void a certificate granted before the month of April on an application made before that month and that, under Rule 5, the certificate had effect from the date of registration of the firm.¹

Total Income.—“The phrase ‘total income’ is used in sections 3, 15 (3), 16 (1), 17, 22 (1) and (2), 23 (1) and (3), 48, 55 and 56. The necessity for the definition and for the use of the phrase is due to the fact that, as stated in paragraph 3, tax is payable not only by individuals, but also by firms, companies, Hindu undivided families and other associations of individuals that is, the Act provided for taxation at the source in certain cases and for taxation in the hands of the individual recipient in others. Whether, however, tax is deducted at the source or in the hands of the individual recipient, it is the total income of the individual recipient from all sources to which the Act applies, that determines his liability to income-tax (that is, whether his total income amounts to Rs. 1,000), and the rate at which he has to pay income-tax on the whole of his income. The solitary exception is in the case of Hindu undivided families, income from which (under section 14 (1) read with section 16 (1) of the Act) is not included in the total income of the individual recipient. Again, there are certain classes or portions of income such as the amounts deducted from salaries under the proviso to section 7 (1), contributions to a recognised provident fund, exempt under section 58-F (1), the sums paid on account of insurance premia under section 15, securities issued income tax free by the Government of India or by local Governments under the provisos to section 8, on which income-tax is not payable, but all such sums are

¹ Hussain Bhai *in re* 2 I. T. C. 43; A. I. R. 1925 Nag. 415.

included in the total income of the assessee for the purpose of determining his liability to income-tax and the appropriate rate at which the tax shall be levied. There is, however, no taxation at the source in the case of super-tax, except to the limited extent provided for by subsections (3A) (3B), (3C), and (3D) of section 18, nor are there any portions of income (other than income derived from a Hindu undivided family by a member or from an unregistered firm in the special case mentioned in the proviso to section 55) which are exempted from payment of super-tax and it is upon the total income that super-tax is chargeable in the hands of the individual."¹

Money drawn by a partner from partnership business, does not necessarily represent the share of the profit of the partner drawing money. Profits can only be ascertained when the accounts are finally settled.² If there are any overdrawings by one partner, they will be debited to the account of that partner, and set off against his profits. The Indo-Burma Petroleum Company, Ltd., by a resolution capitalized a sum of 56½ lacs, during the year 1921. This sum was a part of their profits accumulated and current and they issued bonus shares for this amount. Messrs. Steel Brothers & Co., Limited, one of the two main shareholders of the Company and the assessee in this case, received bonus shares of the value of 28¼ lacs.

The resolution directed that the sum be distributed as a bonus free of Income-tax among the holders of ordinary shares, or their nominees, in proportion to the ordinary shares held by them respectively and that the directors be authorized to distribute them as the unissued shares credited as fully paid in like proportion in satisfaction of such bonus.

¹ Income-tax Manual, para 11, page 152.

² Chettiappa Chettiar, A. I. R. 1930 Mad. 119.

There was no direction to the Directors to pay any dividend; on the contrary, they were directed to distribute the bonus shares. There was no option left to the shareholders; they had to take the bonus shares they could not demand any cash payment. It was held, that the transaction of allotment and receipt of bonus shares did not amount to receipt by Messrs. Steel Bros. & Co., of any income, profit or gain, within the meaning of total income in section 16 of the Act and that consequently they were not liable to super-tax under section 55.¹

Where a limited liability Company, by a special resolution, capitalized its accumulated profits by issuing bonus shares to share-holders who had no option to convert them into cash, it was held, the Company was not assessable in respect of these shares to super-tax.²

Chapter 1

CHARGE OF INCOME-TAX

3. Where any Act of the Indian 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 the 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."

Charge of income-
tax.
P.2, 6, 11, 12, 13, 14, 15.

¹ Steel Bros. & Co., Ltd. v. Government, 1 I. T. C. 326; A. I. R. 1924 Rang. 337.

Commissioner of Income-tax Madras v. Binny & Co., Ltd., 1 I. T. C. 358; A. I. R. 1924 Mad. 802,

History and accounting period.—“Assessee” is defined to mean a person by whom income-tax is payable. Income-tax includes super-tax which is defined in section 55 to be “an additional duty of income-tax.” Under section 3 (39) of the General Clauses Act, the word “person” includes any company or association or body of individuals whether incorporated or not. The executor, administrator or other legal representative of a deceased person is treated for the purposes of an assessment on the income of such deceased person, as an assessee.

The charging sections (sections 3 and 55) lay down who the persons and associations are who are liable to income-tax and super-tax. Income-tax is payable under section 3 by every individual, Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm. While both income-tax and super-tax, therefore, are payable by every individual, Hindu undivided family, company and other association of individuals not being a firm, there is a distinction in the case of firms. All firms whether registered or unregistered are liable to pay income-tax but while unregistered firms are liable to pay super-tax, registered firms are not. The income of registered firms is liable to super-tax in the hands of individual partners of the registered firm. Co-operative Societies, Clubs (not being Companies) and Chambers of Commerce are examples of “association of individuals.”

Private provident funds of companies and firms should not be assessed to income-tax as “other associations of individuals”, otherwise than by deduction at the source upon their income from investments and should not be charged by super-tax at all. They are also eligible for refund of tax under section 48 if they comply with the provisions of that section.¹

Under the Act of 1918 tax at the rates fixed for any year was levied on the income of that year. A provisional assessment was first made on the income of the preceding year and this assessment was subsequently adjusted and corrected when the income of the year in which the provisional assessment was made was ascertained. This system has now been abolished in the present Act which provides for the tax at the rates sanctioned for any year being assessed finally on the income, profits and gains of the “previous year” (see paragraph 6) and for the abolition of the

¹ I. T. M., para 3.

adjustment system except in the cases specially provided for in section 25. The exceptions to the general rule that assessments are made finally on the profits of the previous year are contained in this section. Under the first two sub-sections of section 25, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses that close down during the course of a financial or commercial year, it is provided that in such cases, in addition to the assessment on the income of the previous year, a further assessment may be made in the year in which a business, profession or vocation is closed down on the income of that year. This is merely a discretionary and not an obligatory method of assessment to be adopted in exceptional cases where delay in making the assessment might lead to a loss of revenue.

The other class of cases provided for in subsection (3) of section 25 is confined to those particular businesses, professions or vocations on which tax had been charged under the provisions of the Act of 1918. Since the abolition of the adjustment system meant that in the case of those particular businesses the tax would, had no special provision been made, have to be paid on the profits of one year more than under the system in force under the Act of 1918, it is specially provided that in the year in which such businesses, professions or vocations close down, the adjustment provided for in the Act of 1918 shall be made.

An exception to the general rule that assessments are made on the income of the previous year will also be found in section 24A. Where it becomes known to an Income-tax Officer that a person may leave British India during the 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 up to the probable date of his departure from British India. This provision is intended to catch temporary residents, such as touring theatrical companies, or persons about to change their residence on retirement from the country, who would otherwise escape tax by leaving British India before the close of the year. The rate applicable in respect of such assessments is the rate in force at the time of such assessment.¹

¹ I. T. Manual, para 3, page 145,

Scope.—“The Income-tax Act deals merely with the basis, the method and the machinery of assessment, and does not contain, as the previous Act did, schedules specifying the rates at which income-tax shall be charged. These rates are determined by the Finance Act which is passed annually by the Central Legislature.” The same remarks apply to super-tax.¹

Until the Finance Act for the year is passed no notice under section 22 (2) can be issued. But all other provisions of Income-tax Act, viz., refund of previous year, appeals, proceedings under section 34, rectification of mistakes etc., will continue. The obligation on companies and other persons to furnish returns without a notice under section 22 (2) will also continue even in the absence of Finance Act. A Finance Act is passed once in a year. But in 1931 a supplementary Finance Act was passed² imposing income-tax on incomes between Rs. 1,000 and Rs. 1,999 per annum and imposing a surcharge on income-tax of 12½ per cent. for 1931-32 and 25 per cent. for 1932-33. Surcharge was levied at the uniform rate of 25 per cent. on all incomes in 1933-34 and 1934-35. The passing of Supplementary Finance Act did not, like ordinary Finance Acts passed annually, determine and fix the rate at which tax is levied, but also guides the basis, method of the procedure of assessment of incomes between Rs. 1,000 and 1,999 yearly, called “lower limit cases”. The Supplementary Finance Act did not affect any change in the Income-tax Act, thus creating an anomalous position that an Act which in its scopes should have been confined to defining the rate at which tax should be charged, also provided a particular procedure of taxation. It was intended to remove this anomaly by the addition of another section as Section 3-A of Income-tax Act,

¹ Income-tax Manual, page 152, para. 12; In the matter of Ram Pershad, A. I. R. 1930 All. 389.

² Act 1 of 1931.

so as to introduce in the Income-tax Act two sets of provisions relating to assessment of tax, one relating to lower limit cases, and the other to what may be higher limit cases, in contrast to the former. There does not appear to be any illegality in the matter, however anomalous the position might be. The Indian Legislature is competent to pass any law subject to the provisions of Government of India Act 1919 (now Act of 1935) and there was nothing in the Supplementary Finance Act of 1931, which vitiates it. The fact that a particular place of legislation is badly worded or is inartistic, or even conflicts with another law, does not make it in any way unenforceable for that reason. In 1936, the lower limit law was abolished (Act of 1936).

Total income.—See notes under section 2(15) supra.

Computation of income.—“ Under the Act of 1918 tax at the rates fixed for any year was levied on the income of that year. A provisional assessment was first made on the income of the preceding year and this assessment was subsequently adjusted and corrected when the income of the year in which the provisional assessment was made, was ascertained. This system has now been abolished in the present Act, which provides for the tax at the rates sanctioned for any year being assessed finally on the income, profits and gains of the previous year,” and for the abolition of the adjustment system except in the cases specially provided for in section 25. The exceptions to the general rule that assessments are made finally on the profits of the previous year are contained in this section. Under the first two sub-sections of section 25, in order to guard against a possible loss of revenue owing to delay in making assessment on the profits of businesses that close down during the course of a financial or commercial year, it is provided that in such cases, in addition to the assessment on the income of the previous year, a further assessment may be made in the year in which a business, profession or vocation is closed down on the income of that year. This is merely a discretionary and not a obligatory method of assessment to be adopted in exceptional cases where delay in making the assessment might lead to a loss of revenue.

The other class of cases provided for in sub-section (3) of section 25 is confined to those particular businesses, professions or vocations on which tax had been charged under the provisions of the Act of 1918. Since the abolition of the adjustment system meant that in the case of those particular businesses the tax would, had no special provision been made, have to be paid on the profits of one year more than under the system in force under the Act of 1918, it is specially provided that in the year in which such businesses, professions or vocations close down, the adjustment provided for in the Act of 1918 shall be made.

An exception to the general rule that assessments are made on the income of the previous year will also be found in section 24-A. Where it becomes known to an Income-tax Officer that a person may leave British India during the 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 up to the probable date of his departure from British India. This provision is intended to catch temporary residents, such as touring theatrical companies, or persons about to change their residence on retirement from the country, who would otherwise escape tax by leaving British India before the close of the year. The rate applicable in respect of such assessments is the rate in force at the time of such assessment.¹

Under this section the income of the year previous to the year of assessment is not to be taken as merely a guide to the ascertainment of the income of the year of assessment of the income but as the actual sum which is subject to taxation.²

Income.—Section 3 of the Act of 1918 provided that the Act should apply to "income". Difficulties were experienced in regard to

¹ I. T. Manual, para 14, page 153.

² Commissioner of Income-tax v. Karupiah Kungani, 55 A. L. J. 644; A. I. R. 1929 Mad. 66 F. B.; 116 I. C. 799; Mian Feroz Shah, 7 I. T. L. J. page 56; Commissioner I. T. v. Tehri State, A. I. R. 1934 P. C. 38.

the assessment of business profits owing to a High Court ruling that the word "income" in that section meant income actually or constructively received and that the use of the word in that sense in the said section restricted and limited any interpretation to be placed upon the following sections of the Act which specified the different classes of income liable to the tax. This interpretation would, if strictly followed, have caused considerable inconvenience in assessing business profits to those assesseees who keep their accounts not on the basis of sums actually received and sums actually paid out but on the principles of mercantile accountancy, by the preparation of a profit and loss account and comparison of the value of the stock in hand at the beginning and at the end of each year, since such assesseees would have been required to recast the whole of their accounts on a cash basis for Income-tax returns. There were other directions also in which so strict an adherence to the interpretation placed on the word "income" would have caused difficulties. For this reason the phraseology in section 3 and in other sections of the present Act has been re-worded. The plan adopted has been not to attempt a general covering definition of "income", but to prescribe that the tax shall be chargeable not upon "income" (whether "income" be deemed to mean actual receipts and expenditure or any other general definition) but in respect of "all income, profits or gains" as set out and defined in section 4 and sections 6 to 12 of the Act. If there is any class of income that does not fall within the words that impose the charge in those sections, that class of income is not within the scope of the tax.¹

"Income-tax is a tax on income."² The word income is however nowhere defined. Income means according to Concise Oxford Dictionary, as periodical (usually annual) receipts from one's business, lands, work, investments, etc." Stroud in his Judicial Dictionary gives the same meaning to the word.

Income signifies the idea of coming in, something coming into the hands of recipient. Thus where the income of the

¹ I. T. Manual, para 13, page 153.

² London County Council v. Attorney General, 1901 A.C. 26 at 35; Commissioner of Income-tax Bengal v. Shaw, Wallace & Co. 136 I. C. 743.

recipient Raja was subject to a charge of maintenance ; it was held that the real income of the recipient should be calculated after deducting the amount of maintenance. "It is not a case of application by the applicant of part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it became income in his hands."¹ Similarly, balance of interest does not become income only because a decree is obtained for it.²

Income and Capital.—Capital as such is not assessable to income-tax. In this respect the law in India is in a line with the income-tax law in England.³ Nor is loss of capital or capital expenditure deducted in computing income or profit liable to tax.⁴ Economists have been at pains to clearly define the distinction between capital and income, the former being likened to a tree or the land ; the latter to the fruit of the tree or the yield from the land capital is that which yields, the yield itself is income. But after all, it is always a question whether a particular amount is to be treated as income or an accretion to capital.⁵ Fruits in the hands of a fruitseller and corn in the granary of the corn dealer constitute his capital investment, while in the hands of the owner of the tree which produces the fruit, and of the land which yields the corn, it is income. The distinction between the two terms depends on the origin, nature and circumstances of payment.

¹ Bijoy Singh Duduria, 143 I. C. 145 P. C.

² Rai Bahadur Sahu Jagmandar Das Vaish v. Commissioner of I. T. U. P., 1935 I. T. L. J. page 55.

³ Secretary of State for India v. Scoble, 1 Tax Cases 618.

⁴ Section 9 to 7.

⁵ Laird v. Commissioner of Inland Revenue, 14 T. C. 395.

Thus the mere fact that a capital is paid by instalments will not make it income.¹ Where a company sold some of its land for money,² and where a company sold some of the estates purchased by it,³ the company not being a company for purchase and sale of land or estates, it was held that money received by it was not income even though the sale price exceeded the price at which the lands and the estates had been purchased, and that these were cases merely of appreciation of capital. Money received by sale outright of copyright or a patent is only a capital receipt, but periodical payments made by way of royalty for the use of the patent or copyright constitute income.⁴

It would appear that anything in the nature of capital accretion is outside the scope of Income-tax Act.⁵ An accretion to capital does not become income merely because the capital was invested in the hope that the value would rise.⁶ Thus profits made in isolated transactions are not income.⁷ But where it appears that the trade is carried on in buying and selling of investments, the excess of sale price over the purchase price is income and taxable.⁸ Also where a money-lender buys property in lieu of his debts and then sells the

¹ Laird v. Commissioner of Inland Revenue, 14 T. C. 395 above.

² Hudson Bay Co., 5 T. C. 424.

³ Tebram Rubber Syndicate v. Farmer, 5 T. C. 658.

⁴ Curtis Brown Ltd. v. Jarirs, 14 T. C. 744; Constantine, 11 T. C. 730.

⁵ Pyall v. Hoare, 8 T. C. 521; Craig v. Cowpertheaite, 13 T. C. 627 at 673.

⁶ Leaming v. Jones, 15 T. C. 323 at 357.

⁷ Virppa v. Chettiar, A. I. R. 1930 Mad. 123; Pyall v. Hoare, 8 T. C. 521.

⁸ California Copper Syndicate Ltd. v. Harris, 5 T. C. 159.

same at a higher value, the excess of money received by him is income.¹

Bonus Shares and Debentures.—Where bonus is issued to shareholders in the form of cash, it is income and as such taxable. But when the bonus is not issued in cash, but shares or debentures are issued, without giving the shareholders the option to take the money in cash, such profit or bonus is not income of shareholders.² But where the bonus takes the form of distribution of stock in another company the payment is not of capital but of assets which were profits or gains assessable to income-tax³ or where the bonus is paid in cash, but is returned by the recipient for purchase of new shares, the bonus is income.⁴

Undivided profits distributed on liquidation.—Money distributed by a liquidator on the liquidation of a company, even though it may consist of accumulated profits, is not income in the hands of shareholders.⁵ But profits earned by a liquidator out of the business, when carried on by him are income and liable to tax.

Appreciation of Investment.—Where by the Memorandum of its Association an Investment Trust Company had

¹ *Chettia v. Chettia*, A. I. R. 1930 Mad. 49.

² *Commissioner of Inland Revenue v. Blott*, 8 T. C. 101; *Commissioner of Inland Revenue v. Don Caster*, 8 T. C. 623; *Roe v. The Commissioner of Inland Revenue*, 8 T. C. 613; *Commissioner of Income-tax v. Binny & Co.* 47 Mad. 837; 1 I. T. C. 358; *Commissioners of Inland Revenue v. Fishers Executors*, 42 T. L. R.

³ *Pool v. Guardian Investment*, 9 Tax Cases 167.

⁴ *Roe v. C. I. R.*, 8 T. C. 613.

⁵ *Commissioner of Inland Revenue v. Burrell*, 9 T. C. 27.

power to vary its investment and to sell or change its assets, it was held that the net gain by realising investments at larger prices than were paid for them was income and liable to income-tax.¹ Similarly, the difference between price paid for a Treasury bill and the sum realized by the seller whether by holding it till maturity or by selling it before maturity was income chargeable to income-tax and not an accretion of capital.²

Sale of property and Realising of Assets.—Ordinarily when the owner of property sells it at an enhanced price, the difference between the purchase and the sale price is not assessible,³ but when the transaction amounts to carrying on business in making a profit from purchase and sale of property such profit is taxable.⁴ Interest on unpaid purchase money left in the hands of the vendee is income and not capital.⁵

Married Women.—There is nothing in the Act requiring the separate income of married women to be taken into account in the assessment of their husbands.

Composition of Tax.—Under the existing law of Income-tax in British India the rate of tax being fixed from year to year, composition of tax is not possible. Composition of tax was however permitted prior to the year 1916,

¹ *Scottish Investment Trust Co. v. Forbes*, 3 Tax Cases, 231.

² *The National Provident Institution v. Brown and Ogston*, 8 Tax Cases 57.

³ *Stevens v. Hudson Bay Co. Ltd.*, 5 Tax Cases 424.

⁴ *California Copper Syndicate v. Harris*, 5 Tax Cases 159; *Commissioners of Tax v. Melbourne Trust* (1914) A. C. 1091.

⁵ *Hudson Bay Co. v. Hew*, 7 Tax Cases 206.

when it was given up. No new compositions can be entered into after 1916, but compositions existing before that date hold good. No compositions can however be renewed after the expiry of their term.¹

Mutual Concerns.—Trade implies two parties who are distinct. One cannot trade with oneself, to make a profit.²

Mutual societies are founded with the object of affording help to the members of such societies. In such cases there can be no idea of profit as that would be only paying out of one pocket of the same individual or a class to another.³ Persons who contribute to a common fund for mutual insurance or an association for mutual insurance would not be regarded as carrying on a trade and making a profit.⁴ A social club or a club which provides games and recreation to its members is a mutual association and its income cannot be regarded as income from trade. The essence of a mutual society or fund is mutuality and the members and the society are to be deemed one and the same. Even if such society is registered according to the law for the time being in force for registration of societies, it does not thereby become a

¹ Gresham Life Assurance Society v. Attorney General of Tax Cases 36.

² Dublin Corporation v. M. Adam, 2 T. C. 387 at 397; Dillon v. Corporation of Haverferd West, 3 T. C. 32; Glasgow Corporative Water Commissioner v. Muller, 2 T. C. 131-141.

³ Harris v. Corporation of Burgh of Irvine, 4 T. C. 221 at 223; Carlisle and Silloth Golf Club v. Smith, 6 T. C. 198; United Service Club v. Crown, 2 L. 119; Mysore Hindu Permanent Fund, 1 I. T. C. 217.

⁴ Stylus v New York Life Insurance Co., 2 T.C. 460 of 482.

separate juristic person.¹ The essence of such association in mutuality in the sense that their field of activity is limited to members only. When, therefore, such an association begins to deal with outsiders, or extends its benefits to strangers for payment, the condition of mutuality is broken and the association loses its character as a mutual association, at least as regards its receipts from outsiders.² Therefore money received by a club from its members cannot be called its income,³ but money received by a club from strangers is taxable. Income derived by the Royal Calcutta Turf Club from (1) entrance fee to the stand paddocks and gate money, (2) entrance fee paid by owners of horses, (3) bookmakers license fees and (4) percentage of totalisation, was held to be taxable.⁴ The fact that the members do not receive any profit out of the transactions and that the surplus is donated to charities was held not to entitle the club to any exemption and the test was held to be whether money was received by the club from non-members for something given in exchange.⁵

¹ *New York Life Insurance Co. v. Styles*, 14 A. C. 389; *Jones v. Lancashire Coal Owners Association*, 1927 A. C. 827; 2 I. T. C. 460. *The Tanjore Permanent Fund Ltd. v. Commissioner, I. T., Madras*, 1936 I. T. L. J. page 63.

² *Carlisle and Silloth Golf Club v. Smith* (1913), 3 K. B. 75; 6 T.C. 48 and 198; *Last v. London Assurance Corporation*, 10 A. C. 438; *Equitable Life Assurance v. Bishop*, 1 Q. B. 177; *Dibrugarh District Club*, 55 Cal. 971.

³ *United Service Club Simla v. The Crown*, 2 Lahore 109; 1 I. T. C. 113.

⁴ *Royal Calcutta Turf Club v. Secretary of State*, 1 I. T. C. 108, following *Carlisle and Silloth Golf Club v. Smith*, 2 K. B. 177; and 3 K. B. 75.

⁵ *Dibrugarh District Club* Lin 32 C. W. 691; *Mohuddin Sahib*, 106 I. C. and *Lucknow Ice Association*, 96 J. C. 257; *Trichnopoly Hindu Permanent Fund Ltd.*, 107 I. C. 191.

Similarly in the *Commissioner of Inland Revenue v. The Stonehaven Recreation Ground Trustees*¹ a body known as Town Council of New Town of Stonehaven had taken a piece of ground for recreation purposes. The management was done by a body of trustees, and admission was given to any one on payment. It was held that the trustees were carrying on a trade. In another case the principle was laid down as follows :—

“I do not forget that the object of the agreement was not to make divisible profits and was not conceived in any purely commercial spirit. Its object was, however, to put a body in the saddle which would be able to run the links on a paying basis, and so as to earn the necessary margin required from time to time to meet some item of extraordinary expenditure such as is inevitable in the management of a piece of property of this kind. To exclude the operations of the committee from the category of a business concern because it is disabled from making unlimited profit is impossible. There are many trading concerns which provide public utilities—gas, water, transit, and the like—which are limited in the charges they can make or profits they can earn ; but are none the less subject to income-tax on their profits as business concerns.”²

An association was formed with the object *inter alia* of promoting the interest of corn trade generally and of providing a clearing house, a market, an exchange and arbitration and other facilities for persons engaged in

¹ 15 T. C. 419.

² *Curnoustie Golf Course Committee v. The Commissioners of Inland Revenue*, 14 T. C. 498 ; 1929 T.C. 419.

that trade. Membership was confined to persons engaged in corn trade who were required to purchase at least one share each and to pay an entrance fee and an annual subscription. Payments were made by members and other persons for services rendered through clearing house etc. In deciding whether the profit made by the company was income Rowllat J. observed as follows:—

“Now the question is here whether, so far as this company makes a profit out of what the members pay to it, that is taxable income of the business which they undoubtedly carry on. That alleged profit consists of the amount by which the entrance fees of the members and their subscriptions for the various facilities, if I may use that general word, exceed the amount which is to be taken to be the cost of keeping up the buildings and affording the facilities. Now one does not see at first sight why that is not quite simply a profit. There is the capital of the company which may earn dividends, and the assets which the company has can be used for the purpose of getting payments—it happens from members—for the advantages of such use, and one is tempted to ask why is not that a profit just exactly on the same footing as a profit which is made, as the Attorney-General put it, by a railway company which issues a travelling ticket at a price to somebody who happens to be one of its own shareholders, or at any rate, as much a profit as that made by a company which has a dealing with its own shareholders in a line of business which is restricted to the shareholders. If there was a railway company which only carried its own shareholders, one would feel that when it afforded the advantage to a shareholder of performing an act of transit for him, and was paid by the shareholder, that would be a profit of the company just as much as if the shareholder was a stranger. But what has to be considered is the effect of the decision of the House of

Lords in the well-known and very much discussed case of the New York Life Insurance Company v. Styles and what Mr. Latter has contended for is that in that case it is said that a company, so far as it makes profits out of its members, are not profits which are taxable as the profits of a trade or business. To avoid the absurdity of saying that a railway company is not to be taxable on profits it makes by carrying its shareholders, some line is to be drawn which I find very difficult to lay my finger upon, and Mr. Latter pointed out that in the Styles' case emphasis was laid upon the fact that according to the admission of the Attorney-General, which I must take the House as saying was rightly made, the corporation makes no difference. But the Attorney-General in his argument puts the decision in the Styles' case upon these grounds:—He points out that there was no share capital to provide any assets or to form the basis of any dividend; that a corporation was created under the laws of New York and people who came to that corporation and tendered premiums and were accepted for life insurance on a participating basis became what was called members of that corporation—not shareholders, but members of that corporation—and that operation which was carried on and which was said to yield profits in that case was simply the operation of collecting money, to put it quite shortly, from those shareholders—from those members, those policy-holders—and putting them under a proportionate liability to provide further moneys, if necessary; if there were losses, and on the other hand, affording to those policy-holders the protection of insurance and the possibility of a dividend declared to them, not as shareholders in the ordinary sense but as policy-holders, which would be made good to them not by payment, but by a reversionary addition to the value of their policies. When you have got, said the Attorney-General, a case like that, where there is not any share capital and no share-

holders, but you call the policy-holders members of the company, so that they may go and vote at meetings and so on, then it does not matter if there is an incorporation, because the corporation is merely an entity which stands at the back, and all it is doing is to collect from a certain body of people certain funds and hand them back to them as far as they are not wanted; to put it very crudely, that is about what it comes to. In a case like that it does not matter whether there is an incorporation or not, because there is nothing belonging to the corporation which is severable from what belongs to the aggregation of the individuals—nothing. But in a case of this kind, where there is a share capital with a chance of dividends, a chance of a right to dividends if declared, upon the share capital, and to one side of that a dealing with people who happen to be the owners of the share capital, affording benefits to those people one by one individually, for which they pay money by way of subscriptions and by way of entrance fees as sort of overriding subscription, if I may use that word, which opens the door to subscriptions, there is no reason at all for saying that you are to neglect the incorporation or that you can regard otherwise than as profits the difference which is obtained by dealings between that corporation and people who happen to be its members.”¹

Similarly in a case of a society which bought milk from its members exclusively, but sold the same or the produce thereof in open market, and divided the surplus profit among members after paying interest on paid up share capital and the allocation of a portion to reserve fund, it was held that the test of mutuality was absent, and the profits were

not made by trade among the members, and the income of the society was taxable.¹

Chit Funds.—The assessee was conducting a chit fund as a stake-holder and under the rules of the chit the subscriptions received from the members less 8 per cent. deducted by the stake holder for expenses and charges including income-tax, were auctioned every month among the subscribers. At each auction, the lowest bidder was paid the amount of his bid and the difference between this and the amount put up for auction was distributed as premia among the chit-holders in the form of a reduction from their subscriptions. The assessee was assessed to income-tax as agent of the chit fund in respect of the total premia distributed during the assessment year on the ground that they represented the profits of the fund. It was held, that the sums represented by the premia were not assessable to income-tax, as the transactions of the fund could not be said to bring any profit to the subscribers as a body. Even if regarded as income, the stake-holder could not be taxed on it, as he neither received it nor was entitled to receive it.²

Golf Club.—A Golf club of bonafide members was bound under a clause in its lease to admit strangers to play on its course on payment of green fees to be fixed by the lessors, but subject to a minimum fixed in the lease. The green fees were paid by non-members. It was held that the club so far as it admitted non-members to its benefits for

¹ The Commissioner of Inland Revenue v. Sparkford Vale Co-operative Society Ltd., 12 T. C. 881.

² Secretary to the Board of Revenue v. North Madras Mutual Benefit Co. Ltd., 1 I. T. C.

payment, carried on a trade, and income from strangers was liable to tax.¹

Social Clubs and other Societies.—Persons contributing to a common fund in pursuance of a scheme for their mutual benefit having dealings or relations with any outside body, cannot be said to have made a profit when they find that they have overcharged themselves and some portions of their contributions may be safely refunded. The case of such an association and that of a social club is similar, as members only subscribe for their mutual benefit and money received by a club from its members cannot be regarded its income.²

Encumbered Property.—Where the property in the hands of an individual is subject to an encumbrance or a charge, viz, by way of maintenance or annuity, the real income that comes to the hands of the recipient is not the total income of the property but such total income minus the amount of encumbrance, and tax will be levied only on such amount as is obtained after making the necessary deduction for the charge.³ In such cases the real position is that the assessee collects the income, but is subject to the obligation to divert it into two channels one of which streams is to flow into the coffers of the encumbrancer and the other into the assessee's own.

The case is different in cases of ordinary mortgages or charges, where the whole income legally comes to the

¹ Carlisle and Silloth Golf Club v. Smith, 6 T. C. 201.

² United Service Club v. Crown, 2 L. 119.

³ Bijoysingh Dudaria, 143 I. C. 145 P. C. A. L. J. 1933, 641; 60 Cal. 1029 Re.; London County Council v. Attorney General, 4 Tax Cases 265.

assessee and he is at liberty to appropriate the whole income to himself, but pays interest voluntarily, it may be like a prudent man anxious to prevent interest from piling up. In the latter cases no deduction can be allowed for interest and tax will be levied on the total income coming to the assessee.¹

In an English case it was held that payments which a husband is obliged to make to his separated wife for her separate use during their joint lives are to be deducted in computing his income as such payments are made because the husband is legally compelled to do so.² In India where a widow was in receipt of a certain sum of maintenance under a Court decree, and was given a bungalow for residence, and the amount was not given to her as part of the income or part of the estate, but a monthly sum as maintenance, payable either out of the income or out of the corpus, held that the income was assessable.

Held, also, that the annual value of the bungalow was equally assessable.³

Trust.—Section 40 makes trustees liable for the payment of income-tax in certain cases enumerated in that section. In other cases not covered by section 40, difficulty may be experienced in determining as to who is liable to pay the tax, the trustees or the beneficiary and the decision will have to rest on the facts of each case and on the general law relating to trusts. In cases where tax is levied on trustees they are not entitled to deduct the expenses of distributing the income

¹ Lord Inverchyde's Trustees v. Millar of Tax Cases 14; Commissioner of Inland Revenue v. Paterson, 9 Tax Cases 163.

² Eadie v. Commissioners of Inland Revenue, 9 Tax Cases 1.

³ Sundrabai Saheba v. The Commissioner of Income-tax Bombay, 5 I. T. C. 493.

among the beneficiaries and the total income coming into the hands of such trustees is liable to tax.¹

Profits and Gains.—By profit of a trade is meant that which the trader makes by his trade, “whether there is such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise.”²

Individual.—The word individual is not defined in the Act. It means according to Webster ‘a single person, animal or thing of any kind, a thing or being incapable of separation or division without losing its identity, specially a human being.’ The term includes adults, minors and lunatics. A corporation is an individual.³

Hindu Undivided Family.—Under the Income-tax Act a Hindu undivided family is regarded as a separate entity, and taxed as such. Individual members of a Hindu undivided family are not taxed separately on the income of the undivided family, nor is such income taken into account in computing their separate income for the purpose of income-tax or super-tax.

Joint Hindu Family Firm.—Under the Hindu law a business is a distinct heritable asset.⁴ If a Hindu dies leaving a business it descends like other property according to the law of succession and survivorship to which he is subject. The joint family business thus created is created by operation of

¹ *Aikin v. Trustees of C. M. Macdonald*, 3 Tax Cases 306.

² *Gresham Life Assurance Society v. Styles*, 3 T. C. 185 ; *Raja Jyoti Prasad Singh Deo*, 1 I. T. C. 103.

³ *Trustees of Ebrahim Baronetcy*, A. I. R. 1932, 106 ; 136 I. C. 488.

⁴ *O. L. K. N. Kannappa Chettiar v. The Commissioner of Income-tax Madras*, 2 I. T. C. 381.

law and differs from an ordinary partnership created between members after the death of the ancestor, inasmuch as in the former case the relation of partnership arises by operation of law and is governed by rules of Hindu law, as regards its benefits and obligations, while in the latter case it arises by contract and is governed by ordinary law relating to partnership.

Company.—The powers of a company are defined by its articles of Association, but no minimum of income is fixed for the purpose of taxation of a company. There are companies in which all the shares are owned by one man. The company in such cases is virtually “one man company” and the individual is liable to tax as an individual.¹

A company in liquidation is all the same a company, and the official liquidator is to be treated as its principal officer and taxed as such on the income of the business carried on by him during the pendency of bankruptcy proceedings.² But the company that has been wound up and no business is carried on cannot be assessed to income-tax.³

Firm.—See also notes under section 2(15) supra.

The proprietors of two ice factories and the managers of three ice factories in Lucknow formed themselves into an Association, under an agreement dated 15th March 1923, for a period of two years, with the object of promotion and protection of the trade of ice business and of facilities to the public and also the economising of the working of such manufacture and business. The Association was to have the entire control over the management of sales and distribution of the profits

¹ Dinshaw Maneckji Petit, 51 Bom. 372.

² Agra Spinning and Weaving Mills Co. Ltd., A. I. R. 1934 All. 1701.

³ Tebru v. Farmer, 5 T. C. 658.

to the constituent factories. There was provision in the agreement for the distribution of sale proceeds of the ice amongst the constituent factories in certain proportions.

It was held, that the Association formed under the agreement was a Firm within the meaning of section 3 of the Indian Income-tax Act (XI of 1922) and, as such, was liable to assessment under the same Act.¹

The proprietors of three ice factories, under an agreement dated 13th January 1925, formed a "partnership of a pool" for the supply of ice and agreed to joint management and share of profits, loss and expenses :

It was held, that a firm was constituted by the agreement and was liable to assessment as such.²

Association of Individuals.—The term association only means a group. It has no technical meaning in the Act, the test is that there should be one business carried on on behalf of the whole group by one or more of the members of the group. When on the death of a certain person his property descended to his widow and children as tenants-in-common and the widow as guardian carried on a coffee curing business from funds consisting partly of her own property and partly the property of her children, it was held that the business was all one business carried on by an association of individuals and the widow was assessable for the total business.³

¹ The Lucknow Ice Association v. The Commissioner of Income-tax, U. P., 2 I. T. C. 156.

² Khushi Ram Kukhganjan Ram Tek Chand v. The Commissioner of Income-tax Punjab and N. W. F. Province, 3 I. T. C. 298.

³ Commissioner of Income-tax Madras v. Mrs. T. V. Saldhana, A.I.R. 1932 Mad. 378 (S. B.)

The term association of individuals includes clubs, or unions, or other body of individuals working one business and sharing profits. Thus a number of individuals carrying on toddy shop were held chargeable under this section.¹ A body of trustees comes within the meaning of association of individuals and can be grouped as a unit for the purposes of taxation.² Similarly a partnership of thirteen unregistered firms was held liable to tax on its profits, though not registered.³

Where there is a combination of persons formed for the promotion of a joint enterprise banded together it constitutes an "association of individuals" within the meaning of both section 3 and section 55 of the Income-tax Act. Accordingly, where certain persons join together and remain joined for the purpose of buying, holding and using certain property, they become an "association of individuals" within the meaning of the above sections.⁴

The proprietors of three ice factories, under an agreement dated 13th January 1925, formed "a partnership pool" for the supply of ice and agreed to joint management and share of profits, loss and expenses. It was held, that a firm was constituted by the agreement and was liable to assessment as such.⁵

¹ *In re* Mahiuddin Saheb, A. I. R. 1927 Mad. 1092.

² *Hotz Trust of Simla v. Commissioner of Income-tax*, A. I. R. 1930 Lahore 929.

³ A. I. R. 1931 Lahore 376.

⁴ *B. N. Elias & others v. The Commissioner of Income-tax Bengal*, 1935 I. T. L. J. 469.

⁵ *Khushi Ram Dukhganjan Ram Tek Chand v. The Commissioner of Income-tax Punjab and N. W. F. Province*, 3 I. T. C. 298.

A body of seven persons formed a sort of partnership. Of these, four bid and obtained leases of four toddy shops and profits of these four shops were shared between the seven persons. All assisted apparently in working and financing the shops. It was held, that the association was legal and that they can be taxed under section 3 of the Act on the combined profits of the four shops.¹

For any year.—Not only is the income of the previous year taken as a basis for assessment, but the assessee is in fact charged to tax on the income of such previous year. An assessee who had no taxable income in the previous year cannot therefore be assessed to tax in the year under assessment.²

Non-residents.—In the case of non-residents, income which neither accrues, nor arises, nor is received within British India may be liable to tax under the combined operations of sections 3, 4, and 42. Profits made by a company outside India on premiums of participating policies collected and sent by its branch in India, by investment outside India are profits and gains which are liable to tax in India.³

New business.—As stated in paragraph 14, assessments under the Act are made on the profits of the "previous year." When a new business

¹ Mohideen Sahib, Bellary v. The Commissioner of Income-tax, Madras, 2 I. T. C. 472.

² Beharilal Mallick, 2 I. T. C. 328; 54 Cal. 630. *In re* Ram Prasad, 147 I. C. 434.

³ Rogers Pratt Shellac Co., A. I. R. 1925 Cal. 34; Steel Brothers & Co., A. I. R. 1926 Rang. 97 F. B.; Commissioner of Income-tax Bombay v. National Mutual Association of Australia Ltd., A. I. R. 1933 Bom. 427, 57 Bcm. 519.

is started, therefore, no assessment will, as a rule, be made in the first year, and the assessment in the second year will be made on the profits of the preceding year. The only exception is that referred to in the next paragraph.¹

4. (1) Save as hereinafter 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.

Application of Act.

P 13, 15, 16.

(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 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

¹ I. T. Manual, para 95.

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
P. 17, 33, 78. of income :—

(i) Any income derived from property held under
P. 21. 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 insti-
P. 21. tution 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
P. 23, 32. the property of, any Provident Fund to which the Provident Funds Act, 1897, applies.

(v) Any capital sum received in commutation of
P. 23. 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
P. 33. 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
 P. 34. 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 any employee.
- P. 2. (viii) Agricultural Income.
- (ix) Any income received by trustees on behalf of
 P. 24. recognised provident fund as defined in clause (a) of section 58-A.

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.

NOTES ON SECTION 4 (1)

History.—In the Income-tax Act of 1886, the word income was defined as follows :—

"Income means income and profits accruing or arising or recovered in British India and includes in the case of a British subject within the dominion of a Prince of State in India in alliance with Her Majesty any salary, annuity, pension or gratuity payable to that subject by the Government or by a local authority established in the exercise of the powers of the Governor-General in Council in that behalf."

The Act of 1918 did not contain any definition of income and the present Act also does not define income. Section 4 of the present Act is the charging section. In the Act of 1886 also the charging section was section (4) and ran as follows :—

"Subject to the exceptions mentioned in the next following section, there shall be paid in the year beginning

with the first day of April, 1886, and in each subsequent year, to the credit of the Government of India or as the Governor-General in Council directs, in respect of the sources of income specified in the first column of the second schedule to the Act, a tax at the rate specified in that behalf in the second column of that schedule."

In the Act of 1918 the charging sections were sections 3 (1) and section 14, which ran as follows :—

Section 3 (1)—Save as hereinafter provided this Act shall apply to all income from whatsoever source it is derived if it accrues or arises or is received in British India or is under the provisions of this Act, deemed to accrue or arise or to be received in British India.

Section 14 (1)—The aggregate amount of an assessee's income chargeable under each of the heads mentioned in sections 6 to 11 shall be the taxable income of the assessee.

(2) Subject to the conditions hereinafter set out there shall be levied in respect of the year beginning with the first day of April 1918 and in respect of each subsequent year, by collection in that year and subsequent adjustment as hereinafter provided, upon every assessee in respect of his taxable income at the rate specified in Schedule 1, etc.

It would appear that while the definition of the word income was dropped in the Act of 1918, necessary changes were made in the charging sections.

These sections have been replaced by Sections 3 and 4 (1) and the Finance Act which is passed year after year. Under the present Act, however, the real charging section seems to be section 6 although chapter I is entitled as "charge of income-tax."

Save as otherwise provided.—These words refer to exceptions provided in sections 7 to 12, 4 (3), 14, 15, 48 and 60.

Apply—Scope of Section 4 (1).—The Act applies to all income from whatever source it is derived if it accrues or arises or is received in British India, or is, under the provisions of the Act, deemed to accrue or arise or to be received in British India. The tax is, therefore, payable on all income arising or accruing in British India whether the recipient resides in British India or not.¹ The tax is also payable in respect of income received in British India irrespective of whether it accrued or arose within or without British India.²

What is sought to be taxed is income, and unless a sum can be called income, it cannot be taxed. Thus, where in determining an agency, not being an agency for fixed term, parties make an amicable agreement according to their own notion of what is fair, and a compensation is paid to the agent for the determination of the agency, such compensation not being commission in lieu of notice, represents not the income for the year in which it is received, but the capitalized value of future annual income and as such not taxable as income.³ But moneys received by a company under use and occupancy policies insuring it against loss of profit resulting from the cessation of business consequential upon fire are a receipt which arose from business of the company, as this receipt was inseparably connected with the ownership and conduct of the company's business. Had the company not been insured, their Lordships of the Privy Council observed, under its main fire policies, these particular use

¹ See Madras High Court Case No. 4 of 1921, Chief Commissioner of Income-tax, Madras v. Bhanjee Ramjee & Company (I, Srinivasan Tax Cases, page 147).

² Income-tax Manual, para 15, page 154.

³ *In re Shaw, Wallace & Co.* S. B. A. I. R. 1931 Cal. 676.

and occupancy policies would not have been available to them. As a result, the company had secured for itself a net receipt involving gain, an unusual mode of deriving gain from business, it may be agreed, but not so divorced from the business as to prevent it entering the accounts as a receipt arising therefrom. Moneys which are not strictly profits of a business may yet be income of the tax-payer.¹ For a discussion as to the import of the words income, profits and gains see notes to sec. 3 supra.

Foreign Contracts.—Section 4, Income-tax Act, deals with the place where the profits accrue or arise and not the place where the person who is the ultimate source of profit resides or carries on business. Where the profits arising under contracts made abroad depend on the exercise in British India of knowledge, skill and judgment on the part of the assessee and upon instructions emanating from British India it cannot be said that the profits accrue or arise in British India and such profits, therefore, are not liable to assessment of income-tax in British India.²

Source.—The meaning of this word is not quite clear. Sources of income liable to tax are enumerated in sec. 6 and the words from "whatever source etc." are therefore superfluous. The word source, however, must be considered in its proximate rather than in its ultimate significance. Where

¹ The Commissioner of Inland Revenue v. Newcastle Breivories, 12 T. C. 927; J. Gliksten & Sons Ltd. v. Green, 1929 A. C. 381 Poll; The King v. The B. C. Fir & Cedar Timber Co. Ltd., A. I. R. 1932 P. C. 121. This was a case under secs. 2 and 48 (3) of British Columbia Taxation Act 1924, and the appeal was preferred by the crown from a judgment of the Supreme Court of Canada.

² Chunni Lal B. Mahta v. Commissioner of Income-tax Bombay, 935 I. T. L. J. page 416.

the assessee lent money on two bonds, the first a zarpeshgi lease with usufructuary mortgage and the second a thicca lease both being inter-dependent and the bonds provided for annual appropriation against the principal advanced and for expenses and for yearly profit of the lender, with a condition that if at the end of 15 years the whole of the principal was not paid off, the lessee-mortgagee was to continue in possession until total liquidation of the debts, it was held that the assessee being in the position of a landlord with respect to the actual cultivating tenants within the meaning of the term under the Bengal Tenancy Act, the income derived from lands must be deemed to arise from agricultural source and as such agricultural income within the meaning of the Income-tax Act and was therefore exempt from taxation.¹

Accrue or arise.—The word “accrue” according to the Oxford Dictionary means “to arise or spring as a natural growth or result”, according to Webster “to come by way of increase.” Wharton’s Law Lexicon defines the word “accrue” as “to grow or to arise”, and Bouvier’s Law Lexicon as “to become a present right of demand.” The words accrue and arise have almost the same meaning. Both represent a stage prior to the time when the income becomes receivable.² Income may accrue or arise in one place and be receivable in another. The assesseees were a firm who acted as selling agents to a mill company of ‘I’ outside British India. By terms of the agreement they were entitled to

¹ Commissioner of Income-tax Behar and Orissa v. Kameshwar Singh, A. I. R. 1934 Pat. 178.

² Commissioner of Income-tax v. Phra Praison Salarak, A. I. R. 1929 R. 1; 4 I. T. C. 40; Raghunandan Prasad Singh, A. I. R. 1929 Pat. 476.

a percentage on the gross sale value of all sales. According to the same agreement a shop was opened at B in British India for the sale of cloth produced by the mill. The remuneration earned by the assesseees as commission on sales at B amounted to Rs. 34,658 which was assessed for income-tax and super-tax in British India. The assesseees contended that as they sent all proceeds of sale to the mill at 'P' and received commission on the whole amount at 'P' outside British India, their income of Rs. 34,658 could not be assessed. It was held that the income in question being commission upon sales in British India accrued or arose in British India and none the less so, because as a matter of practice between the parties was paid outside British India and the ultimate right to it arose under an agreement made outside British India.¹ Similarly interest received at Hyderabad outside British India, or Government of India Promissory notes enfaced for payment at Hyderabad Treasury was held to be income accruing or arising in British India.² In determining whether any income accrues, one must not be content to look only at the last stage of the accrual, but must take into consideration the previous stages as well. A limited company incorporated under the English Companies Act and non-resident in British India had its headquarters in London. The company carried on various sorts of business in Burma, especially in connexion with rice, timber and cotton and numerous rice-mills, saw-mills, cotton ginning mills and oil-mills in Burma. The commodities of raw materials were turned into forms suitable

¹ Commissioner of Income-tax Bombay v. Sarup Chand Hukamchand, A. I. R. 1931 Bom. 236; Rogers Pratt Shellac Co. v Secretary of State, 1 I. T. C. 363; The Pondicherry Railway Co. Ltd. v. Commissioner of Income tax, 3 I. T. C. 485.

² Commissioner of Income-tax v. Bansilal Motilal, 4 I. T. C. 337

for use, in Burma and shipped to United Kingdom. The company also exported from Burma raw commodities in the form in which they were purchased. It was held, that the fact of the produce being sold in London and the money being received there, did not prevent profits or gains accruing, or arising, or being deemed to accrue or arise in British India from being taxable under the Indian Income-tax Act.¹

There is however a distinction between the meaning of the words accrue and arise. The word 'accrue' seems to be the more appropriate word to be used in connection with a periodically recurring rights to receive as income which is usually definite in amount, while 'arise' seems to be used more appropriately and frequently in connection with a business in which rights arise to receive income of a more fluctuating kind and at more uncertain intervals.

'Accrue' implies the sense of growing up by way of addition or increase or as an accession or advantage; while the word 'arise' means come into existence or notice, or present itself. The former connotes the idea of growth or accumulation and the latter of the growth or accumulation with a tangible shape as to be receivable.² The distinction can hardly be said to have been observed in the Income-tax Act and the two words have probably been used to indicate the same idea and the one word is more appropriate than the other according to the facts and circumstances of each case.³

¹ Commissioner of Income-tax Burma v. Messrs. Steel Brothers & Co. Ltd., A. I. R. 1926 Rang. 97 F. B.

² Board of Revenue v. Arunachalam Shetty, 1 I. T. C. 75.

³ Rogers Fratt Shellac Co. v. Secretary of State, 1 I. T. C. 363.
Jivan Das v. Commissioner of I. T. Lahore, A. I. R. 1929 Lahore 609 F. B.

The words 'income accruing or arising' are not equivalent to the words 'debts accruing or arising,' as that would be to ignore the meaning of this word 'income.' There must be some coming in to justify the application of the word income. Therefore interest on a mortgage bond cannot be held to accrue simply because it falls due year after year.¹

The trustees of the Colonial Bishopric Fund made an allowance of certain sum to the assessee on account of his position as the Lord Bishop of Lucknow. The sum was received in addition to his pay and was payable and paid to him in London. The payment was gratuitous and no condition was attached to the payment save this that the payment was to be made to the person who for the time being filled in the character of Lord Bishop of Lucknow, it was held that the income accrued or arose to the assessee in British India, for if the assessee chose to give up his appointment he would not get the income.²

Similarly, interest received by an assessee at Hyderabad on Government of India Promissory Notes payable at Calcutta was held to be income accruing in British India and liable to Income-tax.³

The word 'or' implies that the words 'accrue or arise' are used in contradistinction to the word 'received' and are

¹ *In re* Ragbunandan Prasad, A. I. R. 1929 Pat. 476 F. B.; St. Lucia Usine and Estates Co. Ltd. v. Colonial Treasurer of St. Lucia, 1924 A. C. 508.

² In the matter of Right Reverend C. J. G. Saunders, Bishop of Lucknow, A. I. R. 1932 All. 151.

³ Commissioner of Income-tax Bombay v. Raja Bahadur, 32 Bom. L. R. 671.

intended to catch income which would not necessarily be received in British India.¹

Where a foreign company lends money in British India and received money on such loans in British India, the income from such interests accrues in British India.² But remuneration paid by a foreign Government to its servants for work done in British India is not income accruing or arising in British India.³

Similarly profits derived from sale outside British India of goods purchased outside British India by a resident of British India are not profits accruing or arising in British India and cannot be taxed until brought into British India.⁴

Received.—The word ‘received’ is not defined in Act. According to Oxford Dictionary the word ‘receive’ means to take in one’s hand or into one’s possession or to take delivery of a thing from another either for oneself or for a third party. The word ‘receive’ implies a person who receives and another person from whom he receives. A person cannot receive a thing from himself. Thus where one received a large sum of money in Baluchistan for work done as Government Contractor there, which was subsequently invested by him in purchasing property in the Punjab it was held that the income having been once received by him at Baluchistan could not be treated to have been received in the Punjab for

¹ Commissioner of Income-tax v. Bansilal Motilal, A. I. R. 1930 Bom. 381.

² Commissioner of Income-tax Bombay, Trust Corporation, A. I. R. 1928 Bom. 448.

³ Commissioner of Income-tax v. Phaba Phraison Solarak, A. I. R. 1929 Rang. 1 S. B.

⁴ Jewandas v. Commissioner of Income-tax Lahore, A. I. R. 1929 Lah. 609 F. B.

the reason of its having been brought into or transmitted to the Punjab.¹ A mere entry in the account books which does not represent a real transaction cannot be called a receipt.² Received refers to the first event of the income coming into the hand of or under the domain, so to say of the recipient.³

Income may be received in various ways, viz., by actual physical receipt in cash or by being treated as received in the account books. Income which is treated as received in the account books, will be treated as received for the purpose of income-tax, though as a matter of fact it may not have been received.⁴

Where an indebtedness in British India is discharged by the issue of a hundi drawn on a shop at foreign place, the sum paid amounts to a receipt in India by the assessee of his gains outside India.

It is not necessary that in order to come within the meaning of the term received as used in Section 4, I. T. Act, there must be an actual transfer of the money in question and the receipt of the sum in India.⁵

The assessee, a resident of Peshawar, entrusted as commission agent by the Amir of Bokhara with the sale of goods

¹ Rai Bahadur Sunder Das v. The Collector of Gujrat, 1 I. T. C. 189 at 192.

² Gresham Life Assurance Society v. Bishop, 1902 A. C. 287 at 196.

³ Ali Imam, A. I. R. 1925 Pat. 281; 1 I. T. C. 402; Ripon Press and Sugar Mills Co., A. I. R. 1923 Mad. 574, 1 I. T. C. 202.

⁴ Universal Life Assurance Co., 4 Tax Cases 139; Northwich Union Fire Insurance Co., 3 Tax 437; but see explanation and notes under it.

⁵ L. C. T. S. P. Subrahmanyair Chettyiar v. Commissioner of Income-tax Madras, 1936 I. T. L. J. page 113.

in Europe, deposited the sale proceeds in a bank in England and later had the amount transferred to the bank's branch in Bombay. Disputes having arisen subsequently as to the ownership of the deposit amount, a compromise was entered into at Kabul, under which the assessee was allotted out of this deposit a sum of 2 lacs as his commission; it was held that the sum was received by the assessee in British India under allotment by virtue of the compromise.¹

If there are profits in assessee's foreign business sufficient to cover remittances to British India during the year of assessment, the presumption is that the remittances were profits and not from capital. Money remitted from foreign business should be presumed to be out of profits, and the onus of the rebuttal of such presumption is on the assessee. The character of the income is not altered by the use to which the assessee puts such income.²

When a moneylender resident in British India, lends money to a foreigner outside British India and adds the interest becoming due on the loan advanced by him to the principal, but according to the system of accountancy adopted by him, he treats the interest as received, such interest must be deemed to have been received in British India and taxable as such.³ Thus where the debit entries made on account of interest due by the assessee to his creditors in foreign places were treated as payment of

¹ *Tora Gul Rai v. The Commissioner of Income-tax Punjab*, 2 I. T. C 340.

² *S. A. Subbiah Iyer v. Commissioner of Income-tax Madras*, A. I. R. 1930 Mad. 457 S. B. ; *Commissioner of Income-tax Madras v. S. K. R. S. K. Firm Sivaganga Circle*, A. I. R. 1927 Mad. 772 S. B.

³ *Lakshman Chettiar v. Commissioner of Income-tax*, A. I. R. 1930 Mad. 875 S. B.

interest though interest had not actually been paid and such debits were allowed as an expenditure in computing the profits of the assessee's business in British India, it was held that similar entries made on the credit side on account of interest due by debtors but not actually received should be held to be received and taxed as such.¹

Profits of a branch office situated outside British India brought into the head office of a bank by book transfer are to be regarded as received in British India and liable to tax as such.² But money due to the assessee from a Native State and paid by being credited to his account in a bank in that state but afterwards transferred to a branch of the same bank in British India.³

Deemed to accrue, arise, etc.—Section 4 (1) may be divided into two parts, one dealing with the income which is actually received and the other dealing with income, which though not actually received in British India is by a legal fiction deemed to be so received. Tax is also payable in respect of income which is deemed under the provisions of this Act to accrue or arise or to be received in British India. The particular cases where income is “deemed under the Act to accrue or arise or to be received in British India” are specified in section 4 (2), sections 7 (2), and 11 (3) and section 42. The legal fiction, however, does not make a non-recipient of income a recipient; the income is there, and has accrued or been received by the

¹ Commissioner of Income-tax v. Subramaniam Chettiar, A. I. R. 1927 Mad. 841 S. B.

² Commissioner of Income-tax v. Nedungadi Bank, A. I. R. 1926 Mad. 1046 S. B.

³ Saiyad Ah Imam v. Emperor, A. I. R. 1925 Pat. 281 is not received in British India.

person concerned, it only fixes the places where the income is deemed to have accrued, or been received.¹

Interest added to Principal—If deemed to have accrued or received and taxable as such.—When compound interest is payable by a debtor so that the interest that falls due and is not paid, is added to the principal and itself begins to bear interest, the interest so added to the principal retains its character of unrealized interest and is not deemed to either accrue or be received as income.² But where the interest is treated as realized according to the method of accountancy regularly employed by the assessed, it will be deemed to have been received and taxed as such.³

Where a mortgagee obtains a new mortgage in lieu of an old mortgage, there is no realisation of the principal and interest of the old mortgage. The assessee merely receives a new, or it may be, a substituted security for an existing one, and to give security, or a new or an additional security is not to make a payment of the debt. The mortgagee does not, by virtue of the new mortgage, receive payment either of the principal or arrears of interest and as such interest cannot be deemed to have accrued or been received.⁴

¹ *Rogers Pyatt Shelloc & Co. v. Secretary of State*, 1 I. T. C. 368 ; *The Secretary Board of Revenue Madras v. The Madras Export Company*, 1 I. T. C. 104.

² *Raghunandan Prasad Singh, A. I. R. 1929 Pat. 426* ; *The Chief Commissioner of Income-tax Madras v. Vijdah Vekatachalapathy Garu*, A. I. R. 1929 Mad. 405 ; 1 I. T. C. 185.

³ *Subramanian Chettiar, A. I. R. 1927 Mad 841 F.B.* ; 2 I. T. C. ; see notes to sec. 13 *infra*.

⁴ *Raja Raghunandan Prasad and others v. The Commissioner of Income-tax Bihar and Orissa*, A. I. R. 1933 P. C. 101 ; *Lakshman Chettiar v. Commissioner of Income-tax*, A. I. R. 1930 Mad. 121 S. B. ; *In re Raghunandan Prasad*, A. I. R. 1929 Pat. 476 F. B.

But where the assessee is credited with interest in the books of a firm with whom he has got a deposit account and the interest is realisable by the assessee at his will, he is liable to tax on the amount of interest as the sum is actually realisable profit.¹

But where a mortgagee purchases the mortgaged property, any sum received by him over and above the principal represents accumulated interest, and is deemed to be received on the date of the execution of the sale-deed.² Where the assessee purchased the property at an auction sale in execution of his decree, the market value of the property shall be deemed to be the price at which the property is purchased at auction, and the sale is complete at the time of auction, and the excess of price over the principal and expenses and admissible deductions, shall be deemed to be received as interest. Such admissions do not include expenses incurred by the assessee in completing his title and entering into possession of the property after the sale has become absolute.³

The case of a usufructuary mortgage requires consideration. A usufructuary mortgage is only a form of security, and is not enough to pass proprietary title to the mortgagee, and an assessee cannot be deemed to have realized his accumulated interest only because he obtains a usufructuary mortgage in lieu of an old debt or prior mortgage. When the property mortgaged is non-agricultural, there is no

¹ Bhikham Chand Lakshmi Chand v. Commissioner of Income-tax, Bombay, 7 I. T. L. J. 1934, p. 256.

² *In re* Raghunandan Prasad, A. I. R. 1929 Pat. 476 F. B. ; A. I. R. 1933 P. C. 101.

³ Raja Raghunandan Prasad, A. I. R. 1933 P. C. 101 ; A. I. R. 1929 Pat. 416 F. B.

difficulty, as income from the property would be interest on the money advanced. But in case of usufructuary mortgages of agricultural land, when the mortgagee pays Government Revenue and enters into possession and realizes rent from tenants, or otherwise receives the proceeds of the mortgaged property, his income would be deemed to be agricultural income and as such exempt from the operation of income-tax. Even if the mortgagee leases the mortgaged property to the mortgagor on fixed annual payments, such payments are agricultural income.¹ A similar view was held by the Allahabad High Court, and it was held that where a person carrying on moneylending business lends money in the course of such business on the security of land over which he takes a usufructuary mortgage, and he immediately leases back to the mortgagor with a stipulation for fixed annual payments, which amount to definite percentage on the sum advanced, those annual payments should be excluded from the assessments of profits and gains of his business as being agricultural income.² But where a usufructuary mortgagee leased to the mortgagor by the same transaction at a rent equal to interest at specified rate and the Government revenue was to be paid by the mortgagor, the mortgagee being only entitled to enter possession on default and proceed against the mortgagor personally, and provision was made for proportional reduction of interest on a reduction of the principal, it was held that interest received by the mortgagee was interest and not agricultural

¹ Commissioner of Income-tax Madras v. Ibrahisa, A. I. R. 1928 Mad. 543 F. B. overruling Commissioner of Income tax Madras v. Subramania, A. I. R. 1925 Mad. Case No. 18.

² *In re* Makund Sarup, A. I. R. 1928 All. 81; the Madras Case of 1925, subsequently overruled was dissented from.

income.¹ Also where in a case of a usufructuary mortgage the actual possession was with the mortgagor's lessees, and the mortgagee was entitled to lease money, but in default was entitled to recover the same from the mortgagor or add it to the principal, it was held that the lease money could not be called agricultural income in the hands of the mortgagee.²

In order to determine whether the income derived from mortgaged property by a usufructuary mortgagee is "agricultural" income and as such exempt from assessment, the court has to look more to the fact that the collection is made directly by the mortgagee from the tenants, and not to the fact that he afterwards credits it for his interest. Where a creditor is put, in pursuance of the terms of a document, which is a mixture of a usufructuary mortgage and simple mortgage, according to which the rate of interest payable to the mortgagee is fixed and the mortgagee is for all practical purposes in the position of the landholder, the income derived from the lands by the mortgagee is agricultural income.³

Section 4 (1), Indian Income-tax Act, in declaring that "this Act shall apply to all income, profits or gains as described or comprised in Section 6" is prefaced with the words "save as hereinafter provided," and thereafter in the third sub-section it is expressly provided that "this Act shall not apply to.....agricultural income." The result is to exclude "agricultural income" altogether from the scope of the Act, howsoever or by whomsoever it may be received. The

¹ Rajniti Prasad Singh, A. I. R. 1930 Pat. 33 F. B. following 35 All. 48 P. C. and distinguishing A. I. R. 1928 Mad. 543 F. B. and A. I. R. 1928 All. 81 F. B.

² Muhammad Yaqoob Khan, A. I. R. 1929 Lah. 206.

³ Janab Hajee Muhammad Sadak Khoyee Sahib v. Commissioner of Income-tax, Madras, 1936 I. T. L. J. page 50.

exemption is conferred, and conferred indelibly, on a particular kind of income and does not depend on the character of the recipient. Accordingly, the mere fact that "agricultural income" is received by an assessee not as an ordinary proprietor or landlord but as part of the income, profits and gains of his money-lending business, does not make the "agricultural income" assessable as business profits.¹

Is interest on the sterling securities of Government of India or on the sterling securities issued by English companies carrying on business in British India liable to Indian income-tax?—Where such interest is received by the debenture or security holder in British India, it is clearly liable to Indian income-tax under section 4 (1); where, however, it is not received in British India, the tax will only be payable under the terms of the same section if the interest can be held to accrue or arise there. "Accrue or arise" as used in this connection are general words descriptive of a right to receive, and in this view the relevant portion of section 4 (1) of the Act may be paraphrased by stating that the income to which the Act applies is income received in British India or income which there is a right to receive in British India. If this test is applied, interest on the sterling securities of the Government of India, if not received in British India, will not be chargeable with Indian income-tax; and similarly the interest on sterling debentures issued by companies will not be chargeable if, as is usually the case, there is a right to receive it in England. For the purpose of the test it is immaterial in what currency the security or loan and its interest is expressed, and consequently the same principle is also applicable in determining the liability to Indian income-tax of the interest on foreign (other than sterling) debentures. On the other hand, interest on promissory notes of the Government of India enfaced for payment in England is liable to Indian income-tax, since here the right to receive payment of interest is a right to receive it in India, and the concession by which Government paper can be enfaced for payment of interest in London does not constitute any part of the actual contract entered into by Government.²

¹ The Commissioner of Income-tax Behar and Orissa v. The Maharajah Sir Kameshwar Singh of Darbhanga, 1935 I. T. L. J. page 234.

² I. T. Manual, para 16, pages 155-156.

Thavanai Loans.—“Thavanai” means a period of rest. Under the Thavanai system, interest is agreed to be paid at certain periods and in default of such payment, interest remaining unpaid becomes part of the principal and the whole sum carries interest at the rate agreed upon. Debits and credits are made in the accounts on this footing and the amount is carried forward at the end of each Thavanai period, interest due at the end of each Thavanai period, and remaining unpaid is treated as having been received and added to the principal and relent on the rate of the Thavanai interest agreed upon. Such interest is deemed to have been received for the purposes of income-tax.¹

Section 4 (2).—Section 4 (2) was inserted in the present Act owing to the tax having previously been evaded in the case of income accruing or arising out of British India by bringing in the said income at intervals and claiming that as such income was not received in British India in the year in which it accrued or arose out of British India, it was, when brought into British India, not income but accumulated profits or savings or capital.

The sub-section applies to all incomes, profits and gains accruing or arising outside British India to a person resident in British India and provides with respect to such income, profits and gains that they shall be deemed to be income, profits and gains of the year in which they are received or brought into British India notwithstanding that they did not accrue or arise in that year. The provision, of course, merely relates to income, profits and gains and not to the importation of capital. It does not apply to income, profits or gains which accrued or arose before the 1st day of April, 1933, on which day, the sub-section in its present form came into force. Income, profits or gains which accrued before the 1st day of April 1933 will be liable only if they are income, profits and gains of a business and are received in or brought into British India

¹ Narayanan Chetty v. Subbiah Chetty, The Commissioner of Income-tax Madras v. P. P. Pethaperumal Chettiar, 43 Mad. 639; S. V. L. L. Lakshman Chattiar v. Commissioner of Income-tax Madras, 57 M. L. J. 60.

within 3 years of the end of the year in which they accrued or arose. Income from agriculture arising or accruing in an Indian State from land for which any annual payment in money or in kind is made to the State is also not liable under this sub-section.¹

In the Madras High Court Case No. 4 of 1919, Board of Revenue, Madras, versus Ramanadhan Chetty² it has been held that profits derived from business carried on outside British India by persons resident in British India are not liable to assessment under the Act if the profits are not remitted to British India. The assessee in this case who resided in British India was a proprietor of a money-lending business carried on by his agents in various places outside British India. The only part taken by the proprietor in the business was to acquaint himself with the state of business abroad and occasionally to issue general instructions, and it was not disputed that none of the income accruing abroad had ever been transmitted to him in India.

In the Bengal High Court Case No. 56 of 1921, Bengal Nagpur Railway Company, Ltd. versus Secretary of State for India,³ it has been held that the Bengal Nagpur Railway Company is not liable to pay tax on the interest guaranteed by the Secretary of State. This ruling should be followed in the case of all Railway Companies where the interest is guaranteed by the Secretary of State and is paid in England only. It does not apply to cases where the interest is guaranteed by an authority other than the Secretary of State or is paid in India.⁴

By the Income-tax Amendment Act of 1934 the word "income" was added in the beginning of sec. 4 (2), and the words "of a business" which occurred after the word 'gains,' were deleted, and the two provisos were added. The section as it stood prior to the amendment made by Act of 1934, applied only to the profits and gains derived from business and had no application to income, profits and

¹ I. T. Manual, para 15 (ii), page 155.

² I, Srinivasan Tax Cases, page 37.

³ I, Srinivasan Tax Cases, page 178.

⁴ Income-tax Manual, para 15, page 155.

gains derived from other heads of income mentioned in section 6. Thus income, profits and gains accruing or arising without British India to a person resident in British India in respect of salaries, interest on securities, property, professional earnings and other sources (other than business) could not be taxed if they were received or brought into British India even though brought within 3 years of the end of the year in which they accrued or arose. In the statement of objects and reasons for the amendment made by Act of 1934, it was observed as follows:—"There seems to be no logical ground for not treating other classes of foreign income of a resident in British India (for example income from investments abroad) on the same footing as income from business, nor does there seem to be any valid reason why foreign income should not be liable to tax whenever it is received in or brought into British India."

The principle of law that income qua income cannot be received twice¹ is applicable in the case of foreign income coming under 4 (1), and in respect of income falling under section 4 (2), which makes foreign income liable to Indian income-tax also if it satisfies the conditions laid down in that sub-section.

Resident.—The idea of residence occurs in the Indian Income-tax law, (1) in this sub-section in connection with income accruing or arising outside British India to a resident of British India, (2) in connection with profits arising or accruing to a non-resident through or from any business connection or property in British India under section 2 (1), (3) the deduction of super-tax in the case of certain non-resident partners and shareholders under section 57, and (4) professional fees paid in any part of India to a person

¹ See supra.

ordinarily resident in British India, and (5) refunds on account of income-tax under section 48.

In United Kingdom a resident is liable to be taxed on his total income irrespective of where the profits accrue or arise. England being a creditor country, whose residents have enormous investments abroad can ill afford to let off huge incomes that accrue to its inhabitants outside the territory of Great Britain but in India the law is different and the definitions of the word "residence" in English law do not help much in interpreting the word.

Resident in.—These words imply that the assessee must be actually residing in British India. It is not enough that he should be an original resident of British India, which he might have left permanently. The place of residence should not be confused with domicile, as domicile has nothing to do with residence.¹ A man can have only one place of domicile while he can have two or more places of residence.² "The test of liability is not having a place of residence but being a resident which mean that he should be actually residing."³

The word "reside" or "residence" are not used in all the Indian Acts in the same sense and have been interpreted in different senses in different cases.⁴ Residence need not be permanent.⁵ In section 5 of the Insolvency Act "reside" includes occupation for trade whether accompanied

¹ Attorney General v. Coote, 4 Price 183.

² Lloyd v. Sulley, 2 Tax Cases 37, and notes on residence infra.

³ Turnbull v. Foster, 6 Tax Cases 206.

⁴ Everd v. Frere, 8 Mad. 205, *In re De Momet*, 21 Cal. 634 at 633.

⁵ *In re Howard Brothers*, 1873, 11 Ben. L. R. 254.

by sleeping or dwelling.¹ "Reside" used in a will was construed to include occasional use of the house and keeping an establishment there.² In section 3 of the Registration Act, 1877, reside has same meaning as that in section 17 of the old Code. It does not include domicile.³ In section 5 of the Insolvency Act residence for the purpose of filing petition is not "residence" under the Act.⁴ Sometimes the word "dwell" is used in a sense similar to the word reside, but it is submitted that the word dwell has a restricted meaning and applies only to a place where a person ordinarily and permanently resides.⁵ But the words have, however, been used in the Letters Patent and the Code of Civil Procedure to denote the fixed and permanent home of a man where he lives with his family and to which he has always an intention of returning.⁶ A person is said to reside at a place where he lives with his family and sleeps at night, and not his place of business or one of several places of business.⁷

The word reside has a flexible meaning and it should always be interpreted with the object and intent of the particular enactment.⁸

¹ Tagore v. Tagore (1874), 14 Ben. L. R. 60; 1 Ind. App. 337; 22 W. R. P. C. 377; 3 Sar. 395; 3 Suth 47 P. C.

² Ram Kubar v. Har Charan, 1896, All. W. N. 170.

³ Rama Chandra v. Keshav Durgaji, 1881-82, 6 Bom. 100-101; In the matter of Tietkins, 1868, 1 Ben. L. R. O. C. 84.

⁴ *In re* Ram Paul Singh v. 1881, 3 Cal. L. R. 14.

⁵ Tawassul Hussain v. Wajid Ali, 1925 All. 140; 87 I. C. 795.

⁶ Shri Goswami v. Shri Govardhan, 14 Bom. 541 at 550 and 552.

⁷ Parker's Election Agent and Returning Officer 243, I. E. P. vol. 4, page 1.

⁸ R. V. Permanagh Justices, 2 I. R. 563; R. V. Tyrone Justices, 2 I. R. 510.

An alien who had lived for 20 years on board a yacht anchored near the shore in an English port was held to reside in the United Kingdom.¹ A person employed by an English company in Nigeria, who was the rated owner of a residence in England where his wife and family lived and who spent four months in a year there, was held to "reside" in the United Kingdom.² An assessee who was a resident of a village in British India started business and prospered in Ceylon. He was physically present in British India when the profits to be taxed accrued in Ceylon. But he was not physically present in British India when the remittances were received nor was he so present during the year of assessment. It was held that he could be described as residing in British India.³ It would appear that residence implies the idea of the assessee's physical presence at one time or another. The duration of such physical presence which should be enough to constitute residence at a particular place must in great measure depend on the circumstances of each case. A number of facts have to be considered in determining the question of residence, and the question is one of degree and fact. A characteristic factor for consideration, even if it does not fulfil the nature of a test is to ascertain if the suggested alternative place of residence is one which the subject seeks willingly and repeatedly in order to obtain rest or refreshment or recreation suitable to his choice where for a time he is embedded in the enjoyment of what he desired to attain, and found in the abode of his own option. Another factor may be found and an important one if he returns to and

¹ Brown Hurt, 5 Tax Cases 667.

² Johnson v. Inland Revenue, 7 Tax Cases 137.

³ Commissioner of Income-tax Madras v. Karuppiah Kangani, A.I.R. 1929 Mad. 35 F. B.

seeks his own fatherland in order to enjoy a sojourn in proximity to his relatives and friends.¹

Thus a master mariner whose wife and family resided in a house of which he was the tenant, but he himself was absent abroad on duty for the greater part of the year, was held to reside in the United Kingdom.²

But a person cannot be said to have resided at a place only because he has a house in which he had not lived for the whole of the year.

Each person is presumed in law to have a dwelling place or place of residence, and where he has none, he will be deemed to reside at the place where he may be actually dwelling at the time.³

Several places of residence.—A person may have more than one residence at the same time, living sometimes in one and sometimes at another, the house unoccupied by him for the time being remaining empty to which he intends to return at pleasure. If there is such *animus revertendi* present, each house will be his place of residence.⁴

Compulsory residence.—Residence for the purposes of income-tax implies voluntary residence. A person confined in jail, though actually residing at the place of his confinement, cannot be said to reside in such place voluntarily, and cannot therefore be said to be resident in such place.⁵

¹ *Levene v. Commissioner of Inland Revenue*, 6 A. T. C. 323.

² *In re Young*, 1 Tax Cases 57.

³ *Sophia Orde v. Alexander Skenei*, 3 All. 91 at 102; *Greesh Chandra v. Collector of Sylhet*, 7 S. W. R. 349 at 350.

⁴ *Fatima v. Sakina*, 1 All. 51 at 52; *Cooper v. Cadwalдар*, 5 T. C. 101.

⁵ *Ram Labhanga v. Bisban Das*, 3 Indian Cases 607 at 608 (1909).

Residence of companies.—A company is a juristic person and can hardly be said to reside within the ordinary meaning of the word reside. Therefore the word “resident” is a term exceedingly unsuited to describe a juristic person. “The analogy that is really possible between a natural person and a company is that of carrying on business at a place, great or small, and for the purposes of income-tax, the residence of a company is preponderously determined by this kind of fact.”¹

“A company cannot eat or sleep but it can keep house and do business. We ought therefore to see where it really keeps house and does business. The decisions of Chief Baron Kelly and Baron Huddleston in the *Calcutta Jute Mills v. Necholson* and the *Casena Sulphur Company v. Necholson*,² now 30 years ago, involved the principle that a company resides for the purposes of income-tax where its real business is carried on. These decisions have been acted on ever since. I regard that as the true rule, and the real business is carried on where the central management of control actually abides.”³

An English Company which was registered in the United Kingdom and carried on business there, promoted a company to own certain cotton mills in the U. S. A., the latter company being incorporated and registered in the U. S. A. No part of the output of the mills was sold in the United Kingdom. The entire stock of the American Company was owned by the English company either directly or through trustees. Under the bye-laws of the American company, there had to be seven directors of whom three

¹ *Investment Co., Ltd.*, 14 T. C. 119 at 140.

² 4 Tax Cases 83 and 88.

³ Per Lord Loreburn in *De Beers v. Howe*, 5 Tax Cases 198.

had to reside in America, the current business of the company was to be directed by an executive committee of three directors resident in America and the regular meetings of the board were to be held in America, extraordinary meetings being held in the company's office in England. The more important powers could be exercised only by the extraordinary meetings of directors in England; for example, the appointment of higher officials, the filling of the casual vacancies among directors, entering into contracts for over one year, the appointment of directors, the borrowing of money, etc. In practice, dividends also were declared in the extraordinary meetings in the United Kingdom. Held, that there was sufficient evidence before the Commissioners to justify their finding that the American company was resident in the United Kingdom. This decision reiterates the principle that residence is essentially a question of fact.¹

A company registered both in United States of America and Ireland had its registered office at Belfast, where general meetings were held and the minute book was kept and accounts were kept and audited and dividends were declared. But the sole director who had exclusive control over the business actually resided in U.S.A. It was held that the company was resident in Ireland.²

Where a person or a company resides is a question of fact.³

A firm had several branches in British India which were controlled from Madras. It had also branches outside

¹ American Thread Company v. Joyce, 6 Tax Cases, 1 and 163.

² John Hood and Company v. Magee, 7 Tax Cases 327.

³ New Zealand Shipping Company v. Thew, 8 Tax Cases 208.

British India in Federated Malay States and elsewhere. There was no proof that any part of the control of the business outside British India was entrusted to the headquarters at Madras or any branch in British India. It was held that the firm was not resident in British India.

The material date on which an assessee should be a resident in British India, is the date on which profits accrue or arise outside British India.¹

Company may have more than one residence.—The residence of a company does not depend on the place of residence of its partners,² but on the place of control, and it is possible that a company may have more than one place of control. If it can be shown that the central management and control of a company or partnership was divided between two localities, each of them may be said to be a residence of the company or partnership for the purposes of income-tax. The suggested second residence must not, however, have delegation of some portion of partnership business however extensive but a delegation of some portion of the management of the business as a whole. In such a case the company or the firm will be held to have more than one residence simultaneously.³

Joint Hindu Family—Residence of.—A joint Hindu family is a creation of Hindu Law, and cannot be compared to a company or a firm for the purposes of determining its residence. The question as to what is the residence of a

¹ The Commissioner of Income-tax Madras v. Karupiah Kangani, 50 Mad. 847.

² See *infra*.

³ Swedish Central Railway Company v. Thompson, 9 Tax Cases, 342; T. S. Firm v. Commissioner of Income-tax, Madras, 50 Mad. 842; 2 I. T. C. 320.

joint family cannot depend on the nature of the income that it gets or on the place where the central management or control is exercised over the whole business. Such a test cannot be available to a joint Hindu family as joint Hindu family may not possess any trade at all. A joint Hindu family should be said to reside in all those places where members of the family live.¹

Foreign remittances.—Foreign income is not liable to income-tax unless it is brought into British India. A person residing in British India, purchases goods in British India for sales in foreign countries. The goods are received in foreign countries, but no part of sale proceeds are brought into British India. No part of the profits are liable to income-tax.² Capital remitted by a foreign branch of a business carried on in British India is not liable to be taxed. But when money is remitted from business the sum so sent is profit and the burden of proving that it is not profit lies on the assessee. The use to which the assessee puts receipts from foreign business does not alter its character and such receipts are presumed to be income until the contrary is shown. It is a question of fact, the onus of proving which lies on the assessee and which is to be proved like any other fact on evidence available,³ where it was held that the burden of proving that foreign profits received by an assessee

¹ V. S. R. K. S. Somasundaram Chettiar, *Madura v. Commissioner of Income-tax Madras v. T. S. Firm*, 50 Mad. 847 F. B.

² *Jiwan Das v. Commissioner of Income-tax, Lahore*, A. I. R. 1929 Lahore 609 F. B.

³ *S. A. Subbiah Iyer v. Commissioner of Income-tax, Madras*, A. I. R. 1930 Mad. 457 S. B. ; *M. S. M. M. Meyappa Chettiar v. Commissioner of Income-tax Mad.* A. I. R. 1933 Mad. 14 ; A. I. R. 1932 Mad. 513 S. B. See also *Commissioner of Income-tax, Madras v. S. K. R. S. L. L. Firm Siva Ganga Circle*, A. I. R. 1927 Mad. 772 F. B.

accrued or arose more than 3 years back lay on the assessee. After passing of the Income-tax Amendment Act of 1934, all foreign income accruing or arising to a resident in British India will be liable to income-tax whenever it is received in British India.

A Mutual Life Assurance Society had its head office in Edinburgh, but the society lent money in various countries outside Great Britain. Large sums of money were remitted from Australia, about which it was claimed that they were remittances of capital. This contention was negatived and the remittances were held to be income. The following observations may be quoted with advantage. "...This is a large amount of profit which has been made, a large amount which, out of profits, has been remitted to this country. If that is true, then income-tax is payable upon it. If that is not the exact amount, but the parties would be able to show that some part of it ought to be appropriated to capital, and if they could make it apparent that the thing which was received in this country was not only profit, or was not at all profit, but was simply a payment of capital, I think it is for them to show that. Prima facie, this is a large amount of profit (looking at the figures) made by this trading company... The next question is, whether or not, though earned abroad, the profits have been brought to this country. Here is a large amount, putting these figures together, which, to my mind, must include, and obviously does include, a large amount of profits. I think it is for the company to show, if the fact be so, that that ought to receive a certain amount of deduction, because a good deal of it was repayment of that which was in truth the capital and not profit at all. No attempt has been made to do that, but what has been done in lieu of that is to write out to the local agents and say : Whenever you send money to this country do not find out

what in strictness is the difference between capital and income, but describe whatever you send back to us as repayment of capital, take care you do not describe it as interest. It is obvious that the mere nicknaming the sum received and ascribing to it, because it is so named, the character of capital and not of income, cannot defeat the right of the Crown to have the tax levied upon that which in substance and truth is profit earned abroad but brought to this country.”

Per Lord Davey :—“ We find on the 1st of February, 1898, the agent of the company in Australia remitting to this country a sum of £44,000. We are gravely told to believe that that was a remittance of four sums of capital which had been received by the agents in Australia at four different times, three of them in the year 1891 and the other in the year 1896. I must say that that is a draft upon my credulity, a strain upon my powers of belief, which they will not bear. I agree that the mere calling it capital for the purposes of the Inland Revenue will not make into capital that which is essentially and in truth profit, a profit made by the interest received on the securities.”

Joint Family—Foreign business allotted to one partner after partition—Remittances of profit after partition.—Where a member of a joint Hindu family is allotted the foreign business as his share of joint family property on a partition among its various members, foreign profits received by him after the date of partition are not to be treated as capital, but as profits and as such liable to tax.¹ But where a partner retires from the partnership, and gets his share on taking of partnership accounts, and walks out of partnership

¹ Arunachalam Chettiar v. Commissioner of Income-tax Madras, A. I. R. 1929 Mad. 769 F. B.

business, the amount he gets is capital and not income and he cannot be taxed on it.¹

Foreign taxes.—The practice in United Kingdom is that in taxing foreign income, the net income after deducting all foreign dues and taxes is taken for the purposes of income-tax. It is submitted that this practice should be followed in India also when a similar question arises.

The new proviso — The new proviso has presumably been added to prevent agricultural income being taxed. But while all agricultural income is exempt under section 4 (3) (vii), only such agricultural income accruing or arising in a state in India is exempt, for which any annual payment is made to the state.

Explanation—Balance Sheet.—The explanation to section 4 merely states that profits or gains arising outside British India are not necessarily to be deemed to be brought into British India by reason that they are taken into account in the balance sheet. The assessee an undivided Hindu family, had certain business at Calcutta and also certain business at places out of British India. The foreign business made remittances which exceeded the remittances made by the Calcutta business, and in the books of Calcutta business the remittances were treated as loans carrying interest, in the books at Calcutta there were some remittances from foreign business which were in fact entries covering payments of debts by foreign business to the creditors of Calcutta business in the foreign place and on behalf of the Calcutta business. It was held that though the remittances received in Calcutta were profit brought into British India and as such assessable, yet the sums paid by the foreign business as

¹ Commissioner of Income-tax Mad. v. P. R. A. L. Muthukarppa Chettiar, A. I. R. 1934 Mad. 633 at 634.

interest were not received in British India constructively for the purposes of section 4 (2), even though taken into account in preparing the balance sheet.¹ But where the sums were not only taken into account in preparing the balance sheet for the information of shareholders but were amalgamated with the net profits of the head office, and out of the amalgamated sum dividends were paid and directors were remunerated, it was held that the sums which were appropriated for payments made at the head office must be deemed to have been received or brought into the head office. The flow of money by book entries can also amount to remittances of profit and the whole amount of profit including remittance from foreign business was liable to tax.²

Sums received by an outgoing partner at dissolution of partnership.—On dissolution of a partnership an outgoing partner has the right to receive not as in the case of shareholder in winding up a company only a share of the assets, but to receive payment of his profits, profits which were his before dissolution and do not cease to be his on dissolution. Sums received by him in respect of interest on capital are income or profits and assessable to income-tax.³

History.—Under the Act of 1886, “any income derived from property solely employed for religious or public charitable purposes” was exempt from assessment. The exception in the present section was introduced in the Act of 1918 and has continued since then.

¹ *In re Multanchand Jobrumall*, A. I. R. 1931 Cal. 727 S. B.

² *Nedunagadi Bank Ltd., Calcutta v. The Commissioner of Income-tax, Madras*, 49 Mad. 910 ; 2 I. T. C. 243.

³ *Commissioner of Income-tax Madras v. P. R. A. L. Muthukaruppan Chettiar*, 1930 I. T. L. J. page 222 P.C.

Under section 4 (3) (i) income derived from property which is held under a purely religious or charitable trust or under any other legal obligation that it should be utilised for religious or charitable purposes is exempt. The word 'property' in this section does not bear the restricted meaning that it bears in section 9 of the Act but includes securities, a business, or share in a business.

Section 4 (3) (i) exempts two categories of income. First, income from property which is dedicated absolutely and secondly, in case of qualified dedication, so much of the income as is applied or finally set apart for application to religious or charitable purposes.

In the case of absolute dedication, i.e., where there is no outstanding secular interest reserved by the trust, the exemption is complete. In the case of qualified dedication, the trust reserves a secular interest to beneficiaries, Shebaita or heirs of the founder, etc. This secular interest is assessable to income-tax. Suppose 60 per cent is under the trust applicable to religious or charitable purposes and 40 per cent. distributable among the heirs of the settlor. The 40 per cent. is assessable. Suppose also that only 50 per cent. is actually applied or set apart for religious or charitable purposes and the heirs or the Shebaita misappropriate 10 per cent. The 10 per cent. is under the section also assessable.

The maintenance of a Shebaita may or may not come within the category of religious or charitable purpose. It depends on the circumstances of the case. If, for instance, a dedication is absolute and a small portion of the income is given to the Shebaita for his remuneration for carrying out the trusts of the endowment, it would not be secular. If, on the other hand, a fixed sum is given to religious or charitable purposes and the residue of the income is given to the Shebaita for his maintenance, the residue would be held to be secular. The test is whether a suit for partition lies for division of the residue. If it does, then the residue is secular and assessable. In such case, any portion of the dedicated, i.e., ordinarily exempted income which may be misappropriated would also be assessable.

Section 4 (3) (ii) similarly exempts the income of religious or charitable institutions which is derived from voluntary contributions and is applicable solely to religious or charitable purposes.

To secure exemption under clause (i) or clause (ii) of section 4 (3) the income of religious or charitable institutions and income derived from property held for religious or charitable purposes need not be actually spent on religious or charitable purposes in the year of receipt. It is sufficient if it is set aside for those purposes. In the case of mixed trusts, the income-tax authorities are required to enquire into the application of the income. Where property is held in part only for religious or charitable purposes a proportionate share of any expenses incurred on management should be considered to those purposes.

To remove doubts regarding the application of these two clauses, read with the definition of "charitable purposes," to universities and other educational institutions the special exemption under section 60 of the Act mentioned in paragraph 17 (12) was made.

Attention is also invited to the exemption mentioned in paragraph 17 (5) of scholarships granted to meet the cost of education in the hands of the recipients of the scholarships.¹

Property.—“Property is the generic term for all that a person has dominion over.” Property is “indicative and descriptive of every possible interest which a party can have.”²

Property includes debts, claims in action or actionable claims, copyrights, patents, debentures, Government Promissory notes, to all kinds of moveable and immoveable things which can be the subject of ownership and possession. The denotation of the word cannot be restricted to what is in English law termed “real property,” which covers only immoveable property. A narrower interpretation seems to be suggested by section 9, where it seems that the denotation of the term is probably intended to cover the case of houses only and not lands only. “Section 9 however only provides that under the head property certain kinds of

¹ Income-tax Manual, para 21, page 163.

² Jones v. Skinner, S. L. J. ch. 90 (Straid).

property shall be taxed. It does not define the word property, nor does it provide that the denotation of the word property is to be limited to the instances mentioned in the section for purposes other than those enumerated in that section. At any rate, there is no justification for thinking that the narrow interpretation of the word property, by making it include only real property, is warranted by other provisions of the Income-tax law except section 9. It is therefore clear that income from any kind of property, whether real or personal would be exempt from the operation of the Indian Income-tax Act, provided that the property is held in trust or other legal obligation etc.

Property held in trust.—Where income is not derived from property held in trust or other legal obligation whether for religious or charitable purposes, it is not exempt from assessment under this section.

Under a deed of partnership registered under section 2 (14) of the Income-tax Act, it was provided that the partners in the business were four persons holding shares in different proportions and one of such partners as specified therein was a temple in Mathura. In substance, it was a dedication by the three active members of the firm of a share of the profit of their business to charitable purposes. On an assessment to income-tax, it was argued that the amount of profits allocated to charity was not taxable, as being devoted to religious or charitable purposes. It was held that the agreement amounted only to a dedication by certain persons of a portion of the profits, and the income was not derived from property held in trust etc., and as such was liable to tax.¹

¹ *In re* Messrs. Lachman Das, Narain Das of Cawnpore, 1 I. T. C. 378; A. I. R. 1925 All. 22 A. L. J. 913.

In another case, the assessee a Government servant was permitted by the Government to accept an appointment under the University of Rangoon on condition that he assigned the whole of the salary he received therefor, to be held in trust for the benefit of the University and its students. In pursuance thereof, the assessee paid each month the salary drawn by him into a separate account and the moneys therein were devoted to the purposes of the University Boat Club. A draft trust deed containing a declaration of the said trust was sent by the assessee for approval but no deed embodying the terms of the trust was executed by him.

On an assessment of the emoluments under section 8 of the Act as the personal income of the assessee, it was contended that they were never in fact the income of the trust and as such exempt from assessment, it was held that though under the circumstances of the case there was a valid trust for charitable purposes, the emoluments not being income derived from property held under trust, were not exempt from assessment under section 4 (3) (1) of the Act.¹

By a deed of trust the property was vested in the head of a community. The purposes of the trust were various, many of which were neither charitable nor religious. No specific property was set apart for such purposes. It was held that the income of the whole property was taxable.² Similarly, where funds alleged to be set apart for religious or charitable purposes, were found to be completely within the assessee's volition, it was held that there was no trust or legal obligation, and consequently no exemption could be

¹ A. Eggar v. The Commissioner of Income-tax Burma, 2 I. T. C. 286, 287; A. I. R. 1927 Rang. 95 F. B.

² Md. Ibrahim Raza Malik v. Commissioner of Income-tax, A. I. R. 1930 P. C. 226.

claimed.¹ Also where the alleged trust deed gave absolute power of disposal to the spiritual head, and the object of the trust was to serve some needs of the community with no ultimate and permanent dedication to religious objects it was held that the income of property was not exempt under this section.² The English principle is that if an institution which primarily exists for charitable purposes, chooses to raise funds for those purposes by carrying on a business in competition with other persons, who have to pay income-tax, they like them will have to pay income-tax, the fact that the ultimate surplus of the profit is all going to the charitable object, will not make the Income-tax Act inapplicable.

Where a joint Hindu family set apart certain property, out of the income of which certain charitable institution was to be conducted but the trustees instead of applying the income as directed, invested it in a trade and earned profit out of it, it was held that the profits would be assessable to income-tax.

Where money was shown in the account-books of the business in the name of certain charitable and religious institutions and was remitted to British India from outside and spent on these institutions, but there was nothing to show that the moneys were impressed with a trust before they left for British India, it was held that they were not exempt from assessment. It is not enough to allot a sum of money, after it is received, for the purposes of a trust.³

¹ Commissioner of Income-tax v. Bansi Lal Abirchand, A. I. R. 1918 Nag. 102; 108 I. C. 805.

² Commissioner of Income-tax Nagpur v. M. E. R. Malak, A. I. R. 1928 Nag. 10.

³ Commissioner of Income-tax Madras v. R. E. Mohamed Husain Rowther, A. I. R. 1928 Mad. 371; 21 T. C. 483.

An income from a property which has been dedicated to a wakf which is solely employed for the maintenance of the assessee and his children is not income from property dedicated to a religious or charitable purpose and as such is assessable to income-tax.¹

Trust.—The word denotes an express trust.

Other legal obligation.—The exemption is not limited to express trust alone but applies equally to cases in which though there is no express or regular trust deed, yet there is a clear legal obligation to apply the income from the property subject to such obligation, to religious or charitable purposes. These words would cover all obligations in the nature of a trust enumerated in the sections 80 to 95 of the Indian Trust Act.

Wholly.—The word means ‘entirely’ or ‘solely’ and not partly.

Finally.—The word ‘finally’ means irrevocably. All that is needed is a trust or other legal obligation wholly for religious or charitable purposes. Where such trust or legal obligation is proved to exist, the Income-tax Officer is not competent to enquire if the income is in fact applied to the object of the trust or the legal obligation before granting exemption from tax.

Religious and charitable purposes.—The word ‘religious’ has not been defined in the Act. It is submitted that it is difficult to clearly define the scope of religious objects. Whether a particular object is religious or not will depend on the personal law of the individual concerned. Temples, mosques, churches, muths, recital of prayer, performance of

¹ Umar Buksh v. Commissioner of Income-tax, Lahore, A. I. R. 1931 Lahore, page 578.

sacrifices etc. are all "religious." It is not clear if all acts which are either permitted or enjoined by the various systems of religion prevalent in our country, will be regarded as religious in the present age. Thus the practice of 'Sati' or the carrying on of 'Jihad' are clearly religious acts. Human sacrifice has been, and is even now regarded as religious, by some religions. Similar instances may be multiplied. Many acts which were once held highly religious are now regarded as either merely superstitious, or are like 'Sati' actually forbidden. The question whether a particular act is religious or not, is a mixed question of law and fact.

In contradistinction to the word religious the Act defines the word charitable as including relief of the poor, education, medical relief and the advancement of any other object of general public utility. In a case of religious endowment, the question of charity does not arise and a religious endowment may be confined to a limited number of persons. But in the case of a charitable endowment, the benefit must extend to general public and should not be confined to a few individuals. The charitable purposes must be something more than the mere benefit, advancement, or aggrandisement of the members of the society claiming to be established for the charitable purpose.¹ Again a benevolent or liberal purpose is not necessarily a charitable purpose. Thus where the testator endowed a cup for yacht racing, the endowment was not considered charitable.² The object of the trust must be charity, a charitable intention must be shown; there can be no charity without a charitable intention.³

¹ Commissioner of Inland Revenue v Pansel, 3 T. C. 58, 59.

² Re Nottage, 2 Ch. D. 649.

³ 20 M. and H. 133, 60 M. and H. 339, 40 M. and H. 28.

“To ascertain whether a gift constitutes a valid charitable trust.....at first enquiry must be made whether it is public,—whether it is for the benefit of the community or an appreciably important part of the community. The inhabitants of a parish or town or any particular class of such inhabitants may for instance be the object of such a gift but private individuals, or a fluctuating body of private individuals cannot.” If this test is satisfied, it is not necessary that the benefit should be confined to the poor to the exclusion of the rich.¹ Charity is necessarily altruistic and involves the idea of benefit to others.² An examining University which did not teach,³ a professorship,⁴ a well or cistern for drinking water for men and animals,⁵ a school,⁶ the giving of alms to poor, faquirs etc.,⁷ have been held in India among others to be charitable objects. A hospital or dispensary for the benefit of the poor is a charitable institution.⁸ The charitable nature of a hospital is not altered by the fact that some people pay or are even required to pay for the benefits they obtain.⁹ But a hospital or dispensary conducted on business lines, which takes only paying patients is

¹ *Verge v. Somerirlee*, 1924 A.C. 596.

² *The Geologists' Association v. The Commissioners of Inland Revenue*, 14 T. C. 271 at 279.

³ *University of Bombay v. Bombay City Commissioners*, 16 Bom. 217.

⁴ *Manorama v. Kalicharan*, 31 Cal. 166.

⁵ *Karuppa v. Arumuga*, 5 Mad. 383.

⁶ *Hardasi v. Secretary of State*, 5 Cal. 528; *Mazhar Hussain v. Abdul Hadi*, 33 All. 400.

⁷ *Ganapati v. Savitri*, 21 Mad. 10; *Rajendralal v. Raj Kumari*, 34 Cal. 5.

⁸ *Hardasi v. Secretary of State*, 5 Cal. 523.

⁹ *Trustees of Mary Clark Home v. Anderson*, 2 K. B. 645; 5 Tax Cases 48.

not a charitable institution.¹ A fund to establish lectures for preventing cruelty to animals, is for a charitable purpose as also for improvement of agriculture,² or promotion of temperance,³ or the advancement of education,⁴ including technical education⁵ or the promotion of science including mechanical science, which comprises civil engineering⁶ are for charitable purposes.

Nor is income accruing from property which has been dedicated to a wakf, which is solely employed for the maintenance of the assessee and his children, an income devoted wholly to religious or charitable purposes. A wakf by which a Musalman dedicated his property for the maintenance of himself and his family and descendants, does not amount to a wakf for religious or charitable purposes. The Musalman Wakf Validating Act of 1913, made such wakf legally enforceable on the ground that such wakfs were permitted under Mohammadan Law, and that to make provision for oneself and one's descendants was a pious purpose under Mohammadan Law. That Act thus introduces a third element, viz., 'piety,' with which the Income-tax Act is not concerned, and a wakf does not become one for a

¹ *St. Andrews Hospital v. Shearsmith*, 19 Q. B. D. 624; 2 Tax Cases 219; *Blake v. Mayor of London*, 2 Tax Case 209.

² *Pensels Case*, 3 T. C. 58.

³ *Commissioners of Inland Revenue v. Kalkrik Temperance Cafe Trust*, 11 T. C. 353 at 366.

⁴ *Pensels Case*, 3 T. C. 58.

⁵ *The Scottish Woolen Technical College Galashiels v. The Commissioners of Inland Revenue*, 11 T. C. 139; *King v. The Commissioners of Special Purposes of Income-tax*, 5 T. C. 408.

⁶ *Sully v. Royal College of Surgeons, Edinburgh*, 3 T. C. 173.

religious or charitable purpose simply because it is valid wakf under the Musalman Wakf Validating Act of 1913.¹

Where by a will creating a trust it is provided that it will be the duty of the committee of trustees to maintain a certain press and newspaper in an efficient condition and to keep up the liberal policy of the said newspaper, and the paper is not supplied free to the public but is sold to the public at the same rate as other papers, the trust created by the will is not a trust for a charitable purpose within the meaning of sec. 4 (3), I. T. Act, and as such income from the trust is liable to pay the income-tax.²

Institution.—It is a little difficult to define the meaning of the term institution in the modern acceptance of the word. “It seems, I suppose, an undertaking formed to promote some defined purpose having in view generally the instruction or education of the public. It is the body (so to speak) called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle.”³

The word according to Webster means “an established or organised society or corporation; an establishment specially of a public character or affecting a community; a foundation as a literary institution, a charitable institution.” It would appear that the word implies a certain degree of permanence or continuity, and public nature. An individual cannot be regarded as an institution.

¹ Umar Baksh v. Commissioner of Income-tax Punjab, A. I. R. 1931 Lahore 578 S. B.

² Trustees of Tribune Press v. Commissioner of Income-tax Punjab, 1930 I. T. L. J. page 257 F. B.

³ Per Lord Macnaughten.

Religious and charitable institutions.—There is no general exemption from income-tax in favour of charities by the Income-tax law of United Kingdom (Trustees for charitable purposes only are entitled to exemption if they can bring themselves under the provisions of certain schedules).¹ But in India, the exemption is general. (Report of English cases are therefore hardly a guide on this point.)

Exemption of incomes of Local Authorities.—A “Local Authority” is defined in section 3 (28) of the General Clauses Act as a “municipal committee, District Board, etc., legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund.” The words “legally entitled to or entrusted by the Government with” should be construed to mean “entitled by the Law of British India to or entrusted by a Governmental authority in British India with.” It follows therefore that there can be no “local authority” outside British India within the meaning of clause (iii) of sub-section (3) of section 4 of the Income-tax Act. This view does not of course apply to local authorities in British administered areas in Indian States to which the Income-tax Act and the General Clauses Act have been applied.²

Meaning of the word “securities” as used in section 4 (3) (iv).—The definition of the phrase “interest on securities” in section 8 of the Act should not be applied to determine the interpretation to be given to these words in section 4 (3) (iv), since the words as used in section 8 are in a specially restricted sense and do not cover, for example, interest on so typical a form of security as a mortgage. Nor should the meaning of the word “securities” in section 4 (3) (iv) be restricted to the ordinary limited legal sense in which it must always have reference to a loan. Provident Funds are entitled to invest in any trustee security, and it has not been the intention of Government to discriminate between the various classes of investments which are thus legally authorised. The word “securities” in section 4 (3) (iv) should therefore be interpreted as covering all securities mentioned in section 20 of the Indian Trust Act.³

¹ Halsbury's Laws of England, vol. 16, para 1331, page 664.

² I. T. Manual, para 22, page 165.

³ I. T. Manual, para 32, page 172.

Exemptions of Provident Funds.—Under section 4 (3) (iv), the interest on securities held by Provident Funds to which the Provident Funds Act, 1897 (now Act XIX of 1925), applies, is exempt from tax. Similarly under section 4 (3) (v), capital sums paid as accumulated balances at the credit of subscribers to such funds are exempt from tax and are not included in computing their "total income." The words "accumulated balance" include not only contributions but also interest thereon. Under section 15 (1), contributions paid by a subscriber to such funds are also exempt from income-tax to the extent mentioned in section 15 (3). Contributions by employers to such funds stand on a totally different footing and are dealt with in paragraph 64.¹

The exemptions granted to Provident Insurance Societies which comply with the provisions of the Provident Insurance Societies Act, 1912, or which have been exempted from its provisions, were withdrawn by the Income-tax (Amendment) Act, 1924 (XI of 1924). Provident Insurance Societies to which the Provident Insurance Societies Act applies, or which have been exempted from its provisions and which were in existence before 1st April 1924 will continue to enjoy the exemptions under section 4 (3) (iv) and (v) and section 15 (1) to which they were entitled under Act XI of 1922 before it was amended by Act XI of 1924. These concessions cannot be claimed by any other Provident Insurance Societies.²

Section 4 (3) (v).—See also notes under section 58 A to 58 K infra.

Any of the sums enumerated in clause (v) of sub-section (3) of section (4) cannot be called income within the meaning of the Income-tax Act. This clause has been probably inserted as a measure of over-caution. The object of the Income-tax Act is to tax income, a term which it does not define. The amplification of the word 'income' by the addition of the words 'gains and profits' does not lead us far. Income connotes a periodical monetary return, a coming in with some

¹ For special privileges for recognized provident funds see para 24 et seq.

² I. T. Manual, para 23, page 165.

sort of regularity, or expected regularity, from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. Income may be likened pictorially to the fruit of a tree or the crop of a field. It is essentially the produce of something, which is often loosely spoken of as capital. Bearing this connotation of income in mind, it is clear that none of the items enumerated in clause (v) can come within the category of the word income.¹

The manager of Court of Wards had received at the end of his service a lump sum equal to that payable as commutation of pension according to the practice of the Court of Wards, it was held that such payment must be regarded as a capital sum received in commutation of the whole of pension and was therefore exempt from taxation. Para 5 of section 4 (3) does not make any distinction between pensions which may be demanded as of legal right and those which are granted voluntarily and those payable by Government and those payable by any private body or individual, and though a single sum paid in commutation of a pension may be a gratuity, yet it is none the less exempt from taxation.

But when the Government paid to the assessee a large sum of money as compensation for compulsory retirement calculated on the basis of the difference between the pension actually received and the pay he would have received had he remained in service, it was held that no distinction could be made between the cases when the payment is made

¹ Commissioner of Income tax, Bengal v. Shaw, Wallace & Co., 1932 A. L. J. 528; A. I. R. 1932 P. C. 138; 7 I. T. L. J. 1.

before the termination of a person's service and those where it is made after the service is determined and the money paid to the assessee was not exempt.¹

Where an employee receives a lump sum on his retirement from the Officer's Retiring Fund constituted by a limited company, the receipt is in substance a receipt in lieu of pension and not as salary or gratuity and it is exempt from assessment to income-tax under clause (v) of section 4 (3), Income-tax Act.²

Perquisites or benefits not capable of conversion into money.—The provision in section 3 (2) (ix) of the Act of 1918 that "any perquisite or benefit which is neither money nor reasonably capable of being converted into money" was not liable to tax, has been omitted in the Act, as the existence of that provision made it impossible to assess to income-tax, for example, rent-free residences in cases where the assessee had not the power to sub-let, while rent-free residences were liable to the tax where the assessee had the power to sub-let. An explanation has been added to section 7 (1) of the Act specifically providing for the taxation of perquisites in the form of rent-free residences.

Under section 7 (1) of the Act, all perquisites received by an employee in lieu of or in addition to salary or wages are liable to the tax. House-rent allowances and the value of rent-free quarters form additions to the remuneration of an employee; and even where residence in a particular town or building is necessary for the proper performance of the employee's duties, such allowances or perquisites cover expenses of a personal character which the employee would otherwise have to incur. They do not therefore "meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit" and are therefore not covered by the exemption in section 4 (3) (vi) of the Act and are taxable under section 7 or section 12.

¹ Commissioner of Income-tax Madras v. R. Ramchapaksha Ayyer, A. I. R. 1932 Mad. 424 S. B.

² B. J. Fletcher v. Commissioner of Income-tax Madras, 1935 I. T. L. J. page 291.

Two conditions have to be fulfilled before the exemption specified in section 4 (3) (vi) can apply. The expenses incurred by the employee must be wholly and necessarily incurred in the performance of his duties as an employee; and the allowances or perquisites must have been granted by the employer with the set purpose of meeting the extra expense thus caused to the employee, and that extra expenses only. It is thus a question of fact in each case whether house-rent allowance or the value of rent-free quarters is exempt from the tax, but the following examples will serve to indicate the lines on which the decision should be made :—

- (a) A currency officer is granted rent-free quarters in his currency office. Even though his residence in that office is necessary for the proper performance of his duties, he will be liable to the tax on the value of his rent-free quarters, since he would in any case have had to provide himself with a residence, and the perquisite does not therefore meet expenses wholly incurred in the performance of the duties of an office or employment of profit.
- (b) A firm in Calcutta makes a practice of providing its employees with rent-free quarters, and houses some of its employees in its business premises as resident clerks. The employees of the firm, including the resident clerks, will, as in the previous case, be liable to income-tax on the value of their rent-free quarters.
- (c) A Government office has its headquarters in Bombay, but proceeds for some months in the year elsewhere, and grants its ministerial establishment house-rent allowances or rent-free quarters in the place to which it proceeds with the specific object of providing for the maintenance of a second and, from the point of view of the grantees, unnecessary residence in order that they may perform their duties there. The allowance or the value of rent-free quarters will be exempt from income-tax.

In all cases where rent-free houses form part of the perquisites of an employee, the cash value of such a house to the occupier need not ordinarily be deemed to be more than 10 per cent of the salary of the employee. Where an employee is provided with rent-free furnished

quarters, no attempt should be made to split the value of this perquisite into its component elements, i.e., rent-free quarters and rent-free furniture. The maximum of 10 per cent of salary should be applied to the perquisite as a whole.

Such perquisites as (for example), tiffin, domestic services or the value of passages by rail or steamer provided by employers free of charge for their employees are not taxable because they are not convertible into money and there is no special provision in the Act in regard to them as there is in regard to rent-free quarters, but passage money paid in India by an employer to his employee to enable him to go on leave is liable to tax. If, however, passage money is remitted by the employer to the United Kingdom or a Colony and paid there to an employee on leave in such country, it should be regarded as a leave allowance covered by the exemption (22) in paragraph 17.

The "Delhi moving allowance" and "Delhi Camp allowance" which is granted to the members of the office establishments of the Army Headquarters and of certain Civil attached offices of the Government of India during the period of their stay at Delhi and the Simla House-rent Allowance granted under Rule 19 of the Simla Allowances Code and the value of rent-free quarters in lieu thereof fall under example (c) above and are exempt from the payment of income-tax. Special allowances granted solely to meet the higher cost of living in a station such as Compensatory local allowances and the Cutch exchange compensation allowance are liable to the payment of tax.

Rewards granted to officials for passing compulsory examinations must be distinguished from grants made to assist candidates to meet the expenses of preparing for such examinations. Such tuition grants fall under section 4 (3) (vi) of the Indian Income-tax Act (XI of 1922) and are not liable to tax even if they are only paid to successful candidates. For example sums of Rs. 150 and Rs. 200 paid to military officers who have passed the Urdu qualifying and Preliminary Urdu examinations respectively are tuition grants—not rewards—and are therefore not liable to income-tax (see also paragraph 36).

In addition to classes or portions of "Salaries" drawn by officers and other ranks of the Army in India (British and Indian) mentioned in

paragraphs 17 and 22, the following allowances are not liable to income-tax.

- Messing allowance;
- Sycc allowance;
- Forage allowance;
- Detention allowance;
- Meal money;
- Quarterly kit and clothing allowance;
- Outfit allowance;
- Tentage allowance whether separate or included in pay;
- Horse allowance;
- Travelling and conveyance allowances; and

Any capital sum received in commutation of the whole or a portion of a pension or in 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.

The emoluments drawn by the officers and other ranks of the Army which are liable to income-tax are :—

1. Regimental Pay, Command or charge allowances, Staff Pay, P. S. C. Pay and Separation allowance.
2. Ordnance Pay.
3. Corps or Engineer Pay, Batta or field allowance.
4. Lodging allowance.
5. Value of rent-free quarters (officers).
6. Service or proficiency pay.
7. Extra duty pay.
8. Gratuities under Pay and Allowance Regulations, paragraph 137 (I).
9. Annuities under Pay and Allowance Regulations, paragraph 137 (II).
10. Bounty money.

11. Pension drawn in conjunction with pay.
12. Separation allowance.
13. Furniture allowance.
14. Pensions (except wound or disability) paid in India to British and Indian officers and men, their widows, children and dependants.
15. Half-yearly gratuity paid to temporary nursing sisters.

The Marriage allowance is not taxable if paid to the wife of a soldier unless the total income of the wife including the allowance exceeds the minimum taxable limit. Similarly, Maternity benefit is liable only if the total income of the soldier's wife including the benefit exceeds the minimum taxable limit.

The "handling charges" granted to Station Masters are not liable to income-tax since they are intended solely to cover certain expenses that the Station Masters have to incur as such.

As regards the liability of language rewards and examination fees, see paragraph 36.¹

Wholly and necessarily.—These words have a similar meaning as the word 'solely' used in sections 10 (2) (ix) and 12 (1), except that they are stricter in their application. It is not enough that the allowances should be made only for the particular expenses enumerated in the sub-section but it is further required as a condition of exemption that they should be necessary for the performance of the duties of the office or employment.

Expense incurred.—The words "expense incurred" mean that the amount must have been actually spent, an actual disbursement, not mere allowance for loss of time.²

¹ I. T. Manual, para 33, pages 172—175.

² Jones v. Commissioner of Income-tax, 1 O. L. J. Ex. 401.

Casual gains—In order to obtain exemption under this sub-section, receipts must comply with two conditions, viz:—

- (1) they must not be the proceeds of a profession, vocation or occupation, or arise from business, that is from 'any adventure or concern in the nature of trade, commerce or manufacture' (see section 2 (4)); and
- (2) they must be of a casual and non-recurring nature.

(ii) Both these conditions must be fulfilled. It is important to note that receipts may be isolated and yet may not be of a casual and non-recurring nature.¹ The following are illustrations of the effect of the provisions of section 4 (3) (vii):—

- (1) A purchases a house with a view to reselling it at a profit. His profits from the transaction are liable to income-tax (even although it be an isolated transaction). B purchases a house for his own residence and later on sells it at a profit. His profit is not liable to the tax.
- (2) A wins a prize in a lottery or a bet on the race course. His receipts therefrom are not taxable. B is a bookmaker. His profits from betting are taxable.
- (3) A is a professional beggar. His receipts from mendicancy are not exempted from the tax by this sub-section.
- (4) A makes a practice of speculating in the purchase and sale of shares. His profits therefrom are liable to the tax. B purchases Indian War Loan 1929-1947 at 95 redeemable at par. The premium received on redemption after a period of years is not liable to the tax. On the other hand the yield from Treasury Bills arising from their issue at a discount and repayment at par after 12 months or some shorter period is liable to the tax under section 12, though as this yield is not interest, the tax is not deducted at the source under section 18 (3).
- (5) A man writes a book. His receipts from its sale are taxable.

¹ See ruling in the High Court of Judicature at Allahabad in the case of Chuni Lal Kalyan Das versus Crown (I, Srinivasan Tax Cases, page 421).

(6) Lump sum legacies are exempt; annuities granted under a will are not exempt.¹

The expression receipts arising from business means receipts arising from the carrying on of business.²

A tin mine owner lent certain sums of money to a mine engineer to enable him to work a tin area. These loans were not repaid. Thereafter the mine owner lent Rs. 10,000 to the Engineer who required the sum to do certain work at his mine which he had a reasonable prospect of selling. In consideration of the loan of Rs. 10,000 the engineer undertook in the event of the property being sold to pay to the assessee one-third of the total sale proceeds received by him. The property was sold and the assessee received his agreed share of the consideration in cash and shares. It was held that the sum was receipt of a casual and non-recurring nature and hence not liable to tax.³ A voluntary payment to the employee (assessee) of a company in liquidation, by a third person affording him help in the time of trouble is a receipt of casual and non-recurring nature, not arising from business, and as such is exempt from tax.⁴

But bonus given by a company is not a casual income within the meaning of this section.⁵ Nor is a sum of money received from a particular speculative transaction connected

¹ I. T. Manual, para 34, pages 175-176.

² Commissioner of Income-tax Bengal v. Shaw, Wallace & Co., 7 I. T. L. J. page 2 P. C. A. I. R. 138 P. C.

³ Commissioner of Income-tax Burma v. J. I. Milve, A. I. R. 1934 Rang. 4, 1934 I. T. L. J. page 90.

⁴ R. Johnstone v. Commissioner of Income-tax, Burma, 1934 I. T. L. J. 195.

⁵ A. H. Forbes v. Commissioner of Income tax, Bihar and Orissa, 7 I. T. L. J. page 318 at 319.

with a business though the like of which is not likely to recur. The assessee a professional money-lender, obtained an assignment of a mortgage deed in his favour, over which the original mortgagee had executed a sub-mortgage. In a suit in which the assessee was involved the sub-mortgage was found unenforceable, and the assessee realized a considerable sum by enforcing the mortgage assigned to him. In holding that the amount was not exempt Macload C. J. observed as follows :—

“The argument that receipts from the extraordinary transaction connected with the business such as the one in this case which could not be likely to occur again for many years can be placed in the same category as receipts entirely disconnected with business or the profession, a vocation or occupation of the assessee which might be considered of a casual and non-recurring nature, cannot be accepted.”¹

This subsection exempts only receipts of a casual and non-recurring nature. The assessee being in regular business as a cloth and grain merchant which he had given up, received a sum as brokerage for the sale of certain mills but his brokerage transaction was an isolated one in the year of assessment, it was held that the transaction was in the nature of a business within the meaning of section 2 (4) and though an isolated one, it was not of casual and non-recurring nature within the meaning of this subsection and as much taxable.²

Rewards, Prizes, etc.—Rewards and prizes granted, say for passing of examination or for doing some meritorious deed are obviously casual and non-recurring income, but at times it is difficult to decide if they arise from a profession or

¹ S. R. M. S. Subramania Chettiar v. Commissioner of Income-tax, Madras, 1934 I. T. L. J. 156 ; A. I. R. 1934 Mad. 539.

² *In re Chunni Lal Kalyan Das*, 1 I. T. C. 419; 47 All. 372.

occupation. If the passing of an examination is obligatory as in the case of certain Government and other servants, the income certainly arises by virtue of the assessee's holding the official position and is as such taxable. Even if the passing of the examination is voluntary, it may still be income arising from profession. In every case it is a question of fact to decide whether the income arises by the exercise of a profession or from business or vocation.

Rewards for arresting or tracing offenders, would not be taxable, if paid to a person whose ordinary duty was not that of arresting or tracing offenders, but if paid to a man whose main duty it was, for example, to a Police Officer, or an Excise or Opium Officer or a Customs Officer, these rewards would undoubtedly be taxable, as they would arise from the office or profession. A prize given for an essay would not be taxable but not so the premia received by, say, an architect, who frequently tendered plans invited by public competition. Similarly, fees for setting or valuing examination papers, would clearly be taxable if such duties were part of the assessee's professional or other duties. Even if it was not part of his official duties, a person who is an expert in a subject, and who is frequently called upon to examine in it, would still be taxable, but the tax would not be a part of 'salary' but 'income from other sources.' Examples of this would be a professor in a college setting papers for a University, or a lawyer setting papers in law. Border line cases are easily conceivable, for example, a Government servant, say, a policeman setting a paper for a University in a subject like Mathematics or History, for a number of years in succession. In such a case, the presumption would be that he was an expert in that particular subject, and exercised the vocation of an examiner. Fees for giving expert evidence are clearly taxable, as they undoubtedly arise

from the exercise of a profession. Similarly, fees paid to a Government servant for doing work for local bodies, which are first credited to Government, and then paid to the officer, are clearly taxable as part of the salary, and so also honoraria paid by Government to its officers.

Where the transaction is by way of business, it is immaterial that the business is unlawful.¹

Section 4 (3) (viii).—An allowance received by an assessee out of income which is agricultural income is not agricultural income.² Manufacture of salt is not an agricultural purpose.³

Chapter II

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.

* * * * *

¹ Canadian Minister of Finance v. Smith, 5 A. T. C. 620; Graham, v. Green, 9 T. C. 309.

² Vijaya Ananda Gajapatiraj Bahadur, *in re* A. I. R. 1934 All. 818, 1934 I. T. C. L. J. page 49.

³ Commissioner of Income-tax, Madras v. Linga Peddi, A. I. R. 1927 Mad. 848 F. B. (See also notes under section 2).

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

(4) Assistant Commissioners of Income-tax and Income-tax Officers shall, subject to the control of the Governor-General in Council, be appointed by the Commissioner of Income-tax by order in writing. 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 Gazette of India, 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.

Income-tax Authorities.—The Central Board of Revenue is appointed by the Governor-General in Council. Its specific powers are mentioned in the various sections, e.g., section 2 (6), 2 (11)(b), 5 (5), 18 (6), and 59. Rules for carrying out the purposes of the Act are made by the Central Board of Revenue which also issues instructions regarding the interpretation of the provisions of the Act and the rules and is entrusted with the general administration of the Act.

The head of the Income-tax Department of a province or other specified area is the Commissioner of Income-tax who is appointed by the Governor-General in Council. The rest of the Income-tax staff in a province or other specified area are subordinate to him and they are appointed and dismissed by him. His power of appointment and dismissal of Assistant Commissioners and Income-tax Officers is under section 5 (4) "subject to the control of the Governor-General in Council," but the Governor-General in Council exercises this control through the Local Government under the provisions of the following orders :—

"The Governor-General in Council desires to utilise the agency of of the Governor in Council of each Governor's province in the following matters only in relation to income-tax :—

- (i) the appointment by a Commissioner of Income-tax of any person to the substantive post of Assistant Commissioner of Income-tax or Income-tax Officer shall be subject to the previous approval of the Governor in Council.

For the promotion of an Income-tax Officer or appointment of an officer of a Provincial Civil Service to the post of Assistant Commissioner of Income-tax, the Commissioner of Income-tax should consult the Local

Government and submit his nomination (of the Officer approved by the Local Government) to the Public Service Commission through the Central Board of Revenue.

- (ii) Any Assistant Commissioner of Income-tax or Income-tax Officer who has been dismissed or removed from office or whose increment of pay has been withheld by the Commissioner of Income-tax shall have a right of appeal to the Governor-General in Council.

While as regards the appointment of such officials the Commissioner is subject to the control of the Local Government, he has full power to specify the functions to be performed by each official and the areas, persons and classes of income in respect of which these functions may be exercised. He may appoint one or more Income-tax Officers or Assistant Commissioners for the same area and allocate the work to be done by them in such manner as he thinks fit.

The specific powers conferred upon him in regard to income-tax assessments are specified in section 28 (1), 32, 33, 37, 54 (2) second Proviso, 64 (3) and 66 of the Act. In particular he is vested with power under section 33 to review any orders passed by any income tax official, and he alone may, under section 66 of the Act, state cases for the opinion of a High Court.

The functions of Assistant Commissioners of Income-tax are mainly appellate, but they also exercise supervision over the work of the Income-tax Officers. The particular powers conferred on them by the Act are set out in sections 28 (1), 30 (2), 31, 37, 38, 39, 42 (2) and 53.

Income-tax Officers are the assessors. While section 64 of the Act specifies the particular Income-tax Officers by whom assessments shall be made, i.e., prescribes that assessments shall be made in the case of a business by the Income-tax Officer of the area where the principal place of business is situated, and in all other cases by the Income-tax Officer of the Area in which the assessee resides, sub-section (4) of that section provides that every Income-tax Officer shall have all the powers conferred by or under the 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. This particular provision was inserted mainly in order to permit of enquiries being made into the profits of a

branch business by the Income-tax Officer of the place in which the branch is situated and in order to enable every Income-tax Officer to make enquiries regarding all income, profits and gains arising or accruing within the area to which he is posted, even though the assessment in respect of the particular income, profits or gains may not be made by him. Income-tax Commissioner should therefore secure by issuing instructions or otherwise that there is no overlapping in this matter and that the same person is not assessed to income-tax by more than one Income-tax Officer but should at the same time secure that all Income-tax Officers shall give the utmost assistance to the assessing Income-tax Officer in regard to any property, income, profits or gains within their respective areas which are liable to assessment elsewhere.

While it is intended that the work of making assessments, of hearing appeals and of passing orders in review shall ultimately be carried out by separate officials known as the Income-tax Officer, the Assistant Commissioner and the Commissioner, as a complete whole time staff for income tax work has not yet been appointed in some of the provinces, section 5 (4) makes provision for the continuance, until such whole time staff is engaged, of the existing system under which the individual officers exercise the powers of an assessing authority in respect of particular classes of income and of an appellate authority in respect of others, while the reviewing authority is in certain cases also the appellate authority.

While the income-tax staff will as a rule be appointed in provincial cadres, there are certain classes of cases for which it may be advisable that assessments should be made by an all-India staff. Such, for example, are the cases of military officers and of officers of other departments serving directly under the Government of India who are liable to transfer from one province to another; and there may be other cases such as the assessment of Railway companies which at any time it may be considered advisable should be dealt with by a special officer for the whole of India. Sub-section (5) of this section has been inserted to make provision for the appointment of special officers in such cases.

The officers specified in the 3rd, 4th and 5th columns of the schedule below have been appointed to perform all the functions of an Income-tax Officer, Assistant Commissioner of Income-tax and Commissioner of Income-tax, respectively, in respect of the persons specified in the corresponding entry in the 2nd column thereof.

SCHEDULE

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income-tax Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
1	Employees of the Bengal and North-Western Railway.	Income-tax Officer, Gorakhpur.	Assistant Commissioner of Income-tax, Allahabad.	Commissioner of Income-tax, Benares.
2	Persons excluding pensioners and persons employed in Army factories, payable from Army estimates through the Controller of Military Accounts, Eastern Command, Meerut and Lucknow districts, Meerut.	Income-tax Officer, Military Circle, Meerut.	Assistant Commissioner of Income-tax, Meerut.	Do.
3	Employees of the British India Corporation Ltd., stationed at Rangoon.	Income-tax Officer, Cawnpore.	Assistant Commissioner of Income-tax, Cawnpore.	Do.
4	Employees of the Assam Bengal Railway.	Income-tax Officer, Chittagong.	Assistant Commissioner of Income-tax, Dacca.	Commissioner of Income-tax, Bengal
4A	Indian employees in Sind, Punjab and Delhi of Messrs. Ralli Brothers.	Income-tax Officer, B. Division, Karachi.	Assistant Commissioner of Income-tax, Sind.	Commissioner of Income-tax, Bombay.

5	European employees in British India and Indian employees in Bengal, Bihar & Orissa, Assam and the United Provinces of Messrs. Ralli Brothers.	Income-tax Calcutta, III A.	Officer, District	Assistant Commis- sioner of Income- tax, Headquarters (at Calcutta).	Commissioner of In- come-tax, Bengal.
6	European employees of Messrs. Ralli Brothers in Berar.	Do.		Do.	Do.
7	European employees of the Imperial Tobacco Company, India Ltd., and the Indian Leaf Tobacco Development Company Ltd., in the Provinces of Bombay, Madras, United Provinces, Punjab, Bengal, Bihar & Orissa and Assam.	Do.		Do.	Do.
8	European employees of the Tobacco Manufacturers (India) Ltd., and the Printers (India) Ltd., in the Provinces of Bombay, Madras, United Provinces, Punjab, Bengal, Bihar, Orissa, & Assam. Employees of "The Statesman Ltd.," stationed at Lahore and Delhi.	Income-tax Calcutta, IIIA.	Officer, District	Assistant Commis- sioner of Income- tax, Headquarters (at Calcutta).	Commissioner of In- come-tax, Bengal.
	Employees of Messrs. Burmah Shell Oil Storage and Distributing Company of India, Ltd., stationed at Delhi.	Do.		Do.	Do.

SCHEDULE—(Continued)

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income-tax Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
8A	Pensioners residing outside Bengal who are under the Audit of the Accountant-General, Bengal.	I. T. O. Central Salaries Circle, Calcutta.	Assistant Commissioner of Income-tax, Calcutta.	Commissioner of Income-tax, Bengal.
9	Employees of the Bengal Nagpur Railway.	Income-tax Officer, Railways and Miscellaneous Salaries Circle, Calcutta.	Assistant Commissioner of Income-tax, Calcutta.	Do.
10	Employees of the East Indian Railway.	Do.	Do.	Do.
11	Government servants serving outside Bengal who are under the Audit of the Deputy Accountant General, Central Revenue, Calcutta.	Do.	Do.	Do.
12	Military employees under the audit of the Controller of Army Factory Accounts, Calcutta, who are	Do.	Do.	Do.

	<p>serving outside Bengal or whose pension is disbursed by the said Officer.</p>			
12A	<p>Pensioners and persons employed in Army Factories whose pensions and salaries are payable from Army estimates through the Controller of Military Accounts, Eastern Command, Meerut and Lucknow districts, Meerut, who reside in Bengal.</p>	Do.	Do.	Do.
13	<p>Officers of the Women's Medical Service and of the Junior Branch of the same.</p>	Income-tax Officer, Simla.	Assistant Commissioner of Income-tax, Delhi.	Commissioner of Income-tax, Punjab.
14	<p>Military employees stationed in Sind who are under the audit of the Controller of Military Accounts, R. A. F., Ambala.</p>	Income-tax Officer, Ambala.	Assistant Commissioner of Income-tax, Delhi.	Do.
15	<p>Employees of the Madras and Southern Mahratta Railway except those under the audit of the Audit Officer, Railway Collieries, Calcutta.</p>	Income-tax Officer, 4th Circle, Madras.	Assistant Commissioner of Income-tax, Eastern Range, Madras.	Commissioner of Income-tax, Madras.
16	<p>All Government servants who are under the audit of the Accountant General, Madras, and the Deputy Accountant-General Posts and Telegraphs, Madras, but do not reside in Burma or the Andaman Islands.</p>	Income-tax Officer, 5th Circle, Madras.	Assistant Commissioner of Income-tax, Eastern Range, Madras.	Commissioner of Income-tax, Madras.

SCHEDULE—(Continued)

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income-tax Officer. 3	Assistant Commissioner of Income-tax. 4	Commissioner of Income-tax. 5
17	Military employees under the audit of the Controller of Military Accounts, Poona and Southern Command, Poona.	Income-tax Officer, Poona District.	Assistant Commissioner of Income-tax, Central Division, Poona.	Commissioner of Income-tax, Bombay.
18	Government servants under the audit of the Accountant-General, Central Revenues (excluding Government servants in the Indian Audit and Accounts Service attached to Railway and Postal Audit office and Currency office, Rangoon and Madras), the Military Accountant-General, the Deputy Accountant-General, Posts and Telegraphs, Delhi, or the Audit Officer, Indian Stores Department and Government servants resident in the Andamans who are subject to the audit of the Deputy Accountant-General, Posts and Telegraphs, Madras.	Income-tax Officer, Salary Circle, Delhi.	Assistant Commissioner of Income-tax, Delhi.	Commissioner of Income tax, Punjab.

19	Persons not being <i>ex-Enemy</i> Nationals paid through the Controller, Local Clearing Office (Enemy Debts).	Do.	Do.	Do.
19A	Military pensioners resident in the states of Mewar, Bharatpore, Bikaner, Jaipore, Marwar, Alwar, and Bhopal, who are under the audit of the Controller of Military Accounts and Pensions, Lahore.	Do.	Do.	Do.
20	Employees of the North-Western Railway except those under the audit of the Audit Officer, Railway Collieries, Calcutta.	Income-tax Officer, Railway Salary Circle, Lahore.	Assistant Commissioner of Income-tax Lahore.	Commissioner of Income-tax, Punjab.
21	Employees of the Bombay, Baroda and Central India Railway Company and the Great Indian Peninsula Railway Company except those under the audit of the Audit Officer, Railway Collieries, Calcutta.	Income-tax Officer, Salary Branch, Bombay City.	Assistant Commissioner of Income-tax, B Division, Bombay City.	Commissioner of Income-tax, Bombay.
22	Government servants under the audit of the Deputy Accountant General, Posts and Telegraphs, Nagpur.	I. T. Officer, Salary Circle, Nagpur.	Assistant Commissioner of I. T., Southern Charge, Nagpur.	Commissioner of Income-tax, Central and United Provinces.

SCHEDULE—(Continued)

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income-tax Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
23	Employees of the Eastern Bengal Railway.	Income-tax Officer, Railway and Miscellaneous Salaries Circle, Calcutta.	Assistant Commissioner of Income-tax, Calcutta.	Commissioner of Income-tax, Bengal.
24	Persons not resident in British India applying for refund of Income-tax under section 48 of the Indian Income-tax Act, 1922.	Income-tax Officer, Non-residents Refund Circle, Bombay.	Assistant Commissioner of Income-tax, A Division, Bombay.	Commissioner of Income-tax, Bombay.
24A	Persons not resident in British India with income arising in more than one Province and assessed direct, and not through statutory agents under section 43 of the Indian Income-tax Act, 1922.	Do.	Do.	Do.
24B	Persons not resident in British India assessed through statutory agents under section 43 of the	Income-tax Officer of the District in which the statu-	The Assistant Commissioner who has been invested with	Commissioner of Income-tax of the province concerned.

	Indian Income-tax Act, 1922 whether their income arises in a single province or in more than one province.	tory agent carries on the business by reason of which income-tax is chargeable in his name under section 42, or where he resides as the case may be.	power to hear appeals against the decision of the Income-tax Officer referred to in column 3.	
24C	Persons not resident in British India who are chargeable to income-tax by assessment whether through statutory agents or direct and who apply for refund under section 48-A of the Income-tax, Act 1922.	Income-tax Officer of the District or Circle in which the applicant is chargeable by assessment.	Do.	Do.
24D	Persons not resident in British India who are not chargeable to income-tax by assessment and who apply for refund under section 48-A or under section 49 of the Indian Income-tax Act, 1922, or under any Notification issued by Government under section 60 (1) of the said Act providing for relief on account of double payment of income-tax.	Income-tax Officer, Non-residents Refund Circle, Bombay.	Assistant Commissioner of Income-tax, A Division, Bombay City.	Commissioner of Income-tax, Bombay.

SCHEDULE—(Continued)

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income tax Officer.	Assistant Commissioner of Income-tax	Commissioner of Income-tax
1	2	3	4	5
24E	Pensioners who draw their pensions in the United Kingdom and reside in Indian States.	Income-tax Officer, Non-residents Refund Circle, Bombay.	Assistant Commissioner of Income-tax, A Division, Bombay City.	Commissioner of Income-tax, Bombay.
25	Religious and charitable institutions outside British India not liable to income-tax under section 4 (3) (i) and (ii) of the Indian Income-tax Act, applying for refunds of tax deducted at source on interest on securities or for exemption certificates in respect thereof.	Do.	Do.	Do.
25A	"Thana Funds" administered by Political Agents in Kathiawar.	Do.	Do.	Do.
25B	Local or Thana Funds administered by Government officers in Indian States or in British ad-	Do.	Do.	Do.

	ministered areas in those States which are either not liable to income-tax or have been exempted under section 60 of the Act when application is made on their behalf for refund of tax deducted at source on interest on securities or for exemption certificates in respect thereof.			
26	All persons assessed under section 44-C.	Do.	Do.	Do.
27	Employees of the American United Presbyterian Mission, residing in the United Provinces, the Punjab and the North-West Frontier Province.	Income-tax Officer, Gujranwala.	Assistant Commissioner of Income-tax, Lahore.	Commissioner of Income-tax, Punjab.
28	Employees of all Railway Collieries who are under the audit of the Audit Officer, Railway Collieries, Calcutta.	I. T. O. Railway and Miscellaneous Salaries Circle, Calcutta.	Assistant Commissioner of Income tax, Calcutta.	Commissioner of Income-tax, Bengal.
29	All employees in the Posts and Telegraphs Department under the audit of the two Deputy Accountants-General, Posts and Telegraphs (Postal and Telegraphs Branches), Calcutta.	Do.	Do.	Do.

SCHEDULE—(Continued)

Serial No.	Persons.	Officer appointed to perform the functions of—		
		Income-tax Officer.	Assistant Commissioner of Income-tax.	Commissioner of Income-tax.
1	2	3	4	5
30	Employees of the India General Navigation and Railway Company, Ltd, and River Steam Navigation Co. Ltd., working in Bengal, Bihar & Orissa and Assam, except those who carry on business in addition. Employees of W. T. Henley's Telegraph Works Co. Ltd., stationed at Bombay, Karachi, Lahore, Delhi and Madras.	I. T. O. District V. A., Calcutta.	Assistant Commissioner of Income-tax, Calcutta.	Commissioner of Income-tax, Bengal.
31	Government servants under the audit of the Accountant-General, Bihar & Orissa.	I. T. O. Salaries Circle, Ranchi.	Assistant Commissioner of Income-tax, Southern Range, Purulia.	Commissioner of Income-tax, Bihar and Orissa.
32	Government Pensioners under the audit of the Accountant-General, Bihar & Orissa.	Do.	Do.	Do.

33	Employees of the Tin Plate Company of India, Ltd., Golmuri (near Jamshedpur).	Do.	Do.	Do.
34	Employees of the Tata Iron and Steel Co., at Jamshedpur.	Do.	Do.	Do.
35	Employees of the European Mental Hospital, Ranchi.	Do.	Do.	Do.
36	Employees of the Indian Mental Hospital, Ranchi.	I. T. O. Salaries Circle, Ranchi.	A. O. of I. T., Ranchi.	Commissioner of I. T., Bihar & Orissa.
37	Employees of the Lac Research Institute, Namkum (near Ranchi).	Do.	Do.	Do.
38	Employees of the Rajputana Minerals Company Ltd.	Income-tax Officer, Salaries, Bombay.	Assistant Commissioner of Income-tax, B. Division, Bombay City.	Commissioner of Income-tax, Bombay.
39	European staff of Messrs. Volkart Bros, working in the Punjab and Sind.	Income-tax Officer, B. Division, Karachi.	Assistant Commissioner of Income-tax, Sind.	Do.

Previous Law.—Sub-section (2) was as below : “ The Board of Inland Revenue shall consist of one or more persons appointed by the Governor-General in Council.”

The Central Board of Revenue has now taken over the functions of the Board of Inland Revenue. Its constitution is governed by the Central Board of Revenue Act (IV of 1924) and the rules thereunder. It deals at present with the principal central heads of revenue, viz., Customs, Taxes on Income, Salt, Opium, and (to the extent that the Central Government is concerned) Stamps and Excise.

The arrangements for the collection and administration of income-tax have undergone radical alterations since 1886. In those days the revenue was small and the arrangements were comparatively simple. The different schedules were watertight, and the tax under ‘salaries’ and ‘interest on securities’ was finally collected by the persons disbursing the income. The Collector assessed the income of Joint Stock Companies after calling for the returns and accounts ; and there was no provision for revision except by the Commissioner of the Division and that too if the tax exceeded Rs. 250. ‘Other income’ was assessed summarily if the income was below Rs. 2,000 and after notice to the assessee in other cases. The assessee could petition the Collector for revision and again go up to the Commissioner if the tax exceeded Rs. 250. The tax was collected by the Land Revenue officials working under the Local Government. The tax was divided in fixed proportions between the Local and the Central Governments.

In 1916 a system of calling for returns of income in all cases was introduced and summary assessments were given up.

In 1918 rights of appeal were allowed in all cases. A limited right of reference to the High Court was also given but as far as possible the agency of the Local Government was continued for administering the tax.

Then came the Reforms scheme with its separation of finances and functions between the Provincial Governments and the Central Government. Meanwhile, the working of the 1918 Act had shown the need for revising the Act, and a committee was appointed by the Government of India in 1921. This committee—the All-India Income-tax Committee of 1921—recommended the appointment of experts as Income-tax Officers, and the administration of the Department by a Central Board of Revenue (which was called at first the Board of Inland Revenue) assisted by wholetime Commissioners and a number of Assistant Commissioners for each Province. The Government of India accordingly took over the administration of the Department directly in their own hands through their Board of Revenue.

The jurisdiction of the Income-tax authorities is defined by law. No income-tax officer can exercise a jurisdiction not vested in him by law and there is no inherent jurisdiction to do anything relating to a fiscal matter. The Income-tax Officer appointed by the Commissioner of Income-tax to deal with those persons whose cases may be handed over to him by the said Commissioner of Income-tax from time to time is not an Income-tax Officer directed to function as such in respect of any class of persons as contemplated by section 5 (4) and assessment by such an officer cannot be supported in law.¹

¹ *In re* Fachmiram Basantlal, 33 C. W. N. 1206; A. I. R. 1920 Cal. 297 S. B.

Chapter III TAXABLE INCOME

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 :—

Heads of income
chargeable to in-
come-tax.
P. 13

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

In the Act of 1886, income was taxed under four schedules, probably based on the English Income-tax, according to which "the duty is charged upon annual profits and gains in the nature of income from whatever source derived, and is imposed under five schedules, A to E inclusive, which are framed to include all such sources of income."¹ The present six-fold classification was adopted by the Act of 1918 but clause (iii) ran as "income derived from house property." It was held in *Rowe & Co. v. the Secretary of State for India*² that the word house property was confined to buildings used for residential purposes, and that shops, offices and godowns were not included in the term house property. The section was therefore amended in 1920, by which several verbal alterations were also made. The word "heads" was substituted for the word "classes," but this change does not seem to have in any way affected the scope of the section.

¹ Halsbury's Laws of England, vol. 16, para 618, para 1251.

² 1 I. T. C. 161.

Scope.—Section 6 is really the charging section though Ch. 1 is entitled “Charge of Income-tax.” All income arising or accruing or received in British India is taxable under this section. The saving clause makes the charge of income-tax subject to exceptions provided in section 4 (3) and elsewhere. Any class of income even though it falls under any of the heads of this section will yet not be liable to tax if it can fall within any of the exceptions.¹

In calculating income losses incurred by the assessee in one branch of his business can be set off against the profits made by him in another branch.² As has been shown above³ income as contracted with capital in the Income-tax Act, means “a periodical monetary return coming in.” Thus royalties paid to a lessor, though paid for the rights the exercise of which involves a waste of capital are income.⁴ Amounts received by sale of timber trees are income.⁵ Money obtained by letting out temporary shops situated on land taken on a lease by the assessee is income.⁶ The assessee, the proprietor of a mine, mortgaged it to a company and on the same date executed a lease in favour of the said company in return for a royalty, part of which

¹ Commissioner of Income-tax, Madras v. Ibrahimsa Ravithai, 51 Mad. 455; A. I. R. 1928 Mad. 543 F. B.; 3 I. T. C. 33, Rogers Pratt Shellac Co. v. Secretary of State, A. I. R. 1925 Cal. 34a.

² Income-tax Commissioner, Madras v. M. N. A. Arunachalam Chettiar, A. I. R. 1924 Mad. 474; 47 Mad. 660.

³ See notes under section 3.

⁴ Raja Shiva Prasad Singh v. K. Emperor, A. I. R. 1924 Pat. 879.

⁵ Commissioner of Income-tax, Madras v. Manavedan Tirumlapac, A. I. R. 1930 Mad. 764 F. B.

⁶ *In re* Basant Rai Takbert Singh, A. I. R. 1930 All, 293.

was to go towards the payment of interest and the remainder to be paid to the mortgagor. It was held that the entire royalty was income of the assessee and as such liable to tax as it could not be said that the assessee could not take the whole income into his hands and then pay interest if he so chose.¹

Capital as such is not taxable, it is only the yield from capital which is liable to tax. Change of capital from one form to another, does not constitute income, but when the assessee changes his capital to a form which can be called income, it becomes taxable. Where assessee, owner of a Raj, executed a deed in favour of trustees in consideration of the latter undertaking to pay his debts, the expenses of his daughter's marriage, and an annuity of Rs. 2,00,000 to him, it was held that the annuity was not capital but was income, and was so taxable, and it was immaterial that it was the price of the property transferred. Nor could the annuity be regarded as revenue derived from land which is used for agricultural purposes.² But price paid for the sale of the good-will of a business is not income and as such not taxable.³

¹ Commissioner of Income-tax, Patna v. Manager, Kartras Encumbered Estate, A. I. R. 1934 Pat. 146 S. B., distinguishing A. I. R. 1933 P. C. 146 where the state which yielded income to the assessee was subject to the charge of maintenance of step-mother, and the actual income that came to him was the amount left after deducting the amount of maintenance dues.

² Commissioner of Income-tax, Patna v. Gopi Sharan Narain Singh, A. I. R. 1934 Pat. 384 F. B.

³ Commissioner of Income-tax, Bengal v. Shaw, Wallace & Co., 7 I. T. C. L. J. page 2, A. I. R. 1934 P. C. 138.

Nor is premium income received by an Assurance Co. from its members under participating policies liable to income-tax as profits or gains of business.¹

The words profits and gains in this section are an amplification and not a limitation on the word "income".

Other Sources.—The words "other sources" indicate that any thing which can be properly called income is taxable unless it is exempted.²

Illegal Incomes.—There is nothing in the Act to confine the application of the term income to legitimate income only. "There is no ground for saying that profits arising from illegal business are not taxable. The mere fact that the business is speculative or even gambling and wagering within the meaning of that expression does not make it any the less business" and its income is taxable like any other income.³

7. (1) The tax shall be payable by an assessee under
 Salaries. the head "Salaries" in respect of any
 P. 33, 34, 36, 37, 38. 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 Government, a
 local authority, a company, or any other public body or
 association, or by or on behalf of any private employer :

¹ Commissioner of Income-tax, Bombay v. National Life Assurance Co. of Australia, A. I. R. 1931 Bom. 448.

² Commissioner of Income-tax, Patna v. Gopal Sbaran Narain Singh, A. I. R. 1934 Pat. 384 F. B.; Commissioner of Income-tax, Madras v. R. Panchapkesa Ayyair, A. I. R. 1932 Mad. 424.

³ *In re Chunilal Kalyan Das*, 87 I. C. 95; *Birendra Kishore Manikya*, 48 Cal. 766; I. T. C. J. 202 (see also notes under sections 3 and 4).

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 subsection :

Provided that the tax shall not be payable in respect of any sum deducted under the authority of Government from the salary of any individual 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.

P. 11, 73.

(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 Government or by a local authority established by the Governor-General in Council.

P. 1, 15, 37,

Salaries.—The income taxable under this head includes not only fixed salaries or wages and annuities or pensions, but also any fees, commissions, perquisites or profits received in lieu of, or in addition to, salaries or wages which are paid to an employee by or on behalf of any employer. Under the Act of 1918 the income chargeable under this head applied only to "salaries" in the above sense when paid by or on behalf of Government, a local authority or company, any other public body or association or by or on behalf of any private employer who had entered into an agreement with the Income-tax Officer to recover the tax on behalf of Government, but under the present Act it applies to all salaries paid by or on behalf of every private employer, the obligation to deduct income-tax from salaries being, under section 18 (2) of the Act an obligation on every employer.

(ii) A payment made on retirement, etc., to an employee from a private Provident Fund, that has been formed into a genuine Trust, cannot be regarded as a payment of salary within the meaning of section 7 (1) of the Indian Income-tax Act XI-1922, because (for one thing) the trust is not

the employee's employer. Such a payment is therefore not liable to taxation by deduction of tax at source.

(iii) Accumulated balances when paid to employees of recognised provident funds are however exempt from tax if they satisfy the provisions of section 58-G (vide paragraph 24).

(iv) For the interpretation of "salary" for the purposes of recognised provident funds, see paragraph 29.

(v) Fees (including retaining fees) paid to Government pleaders and Public Prosecutors are not "salaries" within the meaning of section 7 of the Act, but "professional earnings" within the meaning of section 11 of the Act.¹

Salaries.—Salary signifies "a recompense or consideration given unto any man for his pains bestowed upon another man's business" (Stroud). The law does not require that salary is to be paid monthly, no intervals are fixed at which salaries are to be payable.

When a salaried partner received a certain salary from partnership business, it is taxable as such, even though the Income-tax Officer does not deduct the amount from the profit of the firm.²

But where under a benefit scheme for its employees, a company sets aside an annual bonus with which shares in the company are purchased in the joint names of a trustee and the employee and the shares are to become the absolute property of the employee on the termination of the employment with the company, the transfer of shares in such circumstances is not a payment of salary.³

¹ I. T. Manual, para 36 (i) to (v), page 187.

² S. V. K. L. Somasundaram Chettiar v. Commissioner of Income-tax, Madras, 2 I. & L. J. 201; M. L. J. 1934 page 638 F. B.

³ Rangoon Electric Tramway and Supply Co. Ltd. v. Commissioner of Income-tax, Burma, 7 I. T. L. J. page 327, A. I. R. 1933 Rang. 22.

Also the interest paid by the company on the contributions which the company makes to the Provident Fund is a perquisite in addition to the salary or wages of the employees of the company. As and when the interest on the company's own contribution to the Provident Fund is paid by the company and received by the employee, the sum so paid is salary within the meaning of this section.¹ Income-tax voluntarily paid by an employer in respect of the salary of his employees was held to be part of the latter's salary and taxable as such.² Where the employees get a commission on the profits in addition to salary, such commission is to be deemed a part of salary.³ Also where the remuneration of an employee is a certain sum of money for a year with a certain percentage on the turnover as commission, the commission is part of his salary.⁴ A lump sum paid to the directors of a private company in addition to ordinary remuneration, the power to vote such sum being provided in the Articles of Association was held to be salary.⁵

So also a gift of money voluntarily paid by the congregation to a minister of religion by virtue of his office as such is deemed to be part of his salary ;⁶ so grants made in addition of stipends of ministers.⁷ Thus an allowance made to

¹ *Bombay Burma Trading Corporation Ltd. v. Commissioner of Income-tax, Burma*, 7 I. T. L. J. 332 ; A. I. R. 1933 Rang. 30 F. B.

² *Hariland v. Diggins*, 10 Tax Cases 247 ; *North British Co. v. Scott*, 8 Tax Cases 332.

³ *Mc. Donald v. Shand*, 8 Tax Cases 42.

⁴ *Paiker v. Chapman*, 13 Tax Cases 677.

⁵ *Howletts Case*, 10 Tax Cases 454.

⁶ *Strong's Case*, 1 Tax Cases 207.

⁷ *Poynting's Cases*, 2 T. L. R. 428.

the assessee who was the Lord Bishop of Lucknow from a fund known as Colonial Bishopric Fund, Lucknow, the payment of which was gratuitous, and the only condition of payment was that it was to be paid to the person for the time being holding the office of Lord Bishop of Lucknow, it was held that the income was salary within the meaning of this section.¹

But where the payment is made to a minister of religion or other official not by virtue of his office, but on account of some personal consideration of poverty, or otherwise, the income is not salary.² The test is whether the income accrues to the person for whom it is intended by virtue of his office, it does not matter whether it was paid voluntarily by the payers or whether the payment was compulsory on their part.³

Thus where after the liquidation proceedings of a certain company were over, the shareholders resolved to pay to the liquidator a part of a sum that remained after the termination of the liquidation proceedings, it was held that the gift was not by virtue of his office to the assessee and as such not taxable.⁴ The proceeds of a benefit match, granted by a cricket club to a professional cricketer in their service, given to him on his retirement, is in the nature of a personal gift, and not taxable as salary.⁵

¹ The Rt. Rev. C. J. G. Saunders, Bishop of Lucknow, *In re*, 1931 A. L. J. page 1107.

² Turton's Case, 21 T. L. R. 516; 5 Tax Cases 138; Cunson's Cases, 2 Tax Cases 422.

³ P. Herbert v. Mc Quade, 2 K. B. 620; 4 Tax Cases 489 at 500, approved in Cowan's Case, 7 Tax Cases 372 and Poynting's Case, 5 Tax Cases 145.

⁴ Cowan's Case, 7 Tax Cases, 372.

⁵ Stey Mour's Cases, 11 Tax Cases 625.

But moneys drawn by a Sajjadanashin out of the income of khankah property, for the maintenance of himself and his family is not salary, as a Sajjadanashin is himself an integral part of the institution, whose existence so to say, depends on his personality.¹

Wages.—Wages are personal earnings of labourers and artizens (Stroud).

Annuity.—Annuity “is an yearly payment of a certain sum of money granted to another in fee for life or years charging the person of the grantor only (Stroud).” Where an income is purchased with a sum of money, the capital has gone and has ceased to exist, the principal having been converted into an annuity.² “When you buy an annuity, it means that you spend your capital in buying income, you have not any longer got capital but you have got income. If the principal sum has gone and been converted into something else, there is an annuity, but if you are liquidating a principal sum it is not annuity.”³ It means a recurring annual payment, not principal money paid back by instalments.

Pension.—A pension is a payment made in consideration for past services. It is in the nature of a deferred pay.

Gratuity.—Gratuity is something voluntarily given in return for a favour of service as a recompense or acknowledgment (Webster).

Perquisites.—See also notes to section 4 (2) (vi) and para. 33.

¹ The Secretary of State for India v. Mubiuddin Ahmad, 1 I. T. C. 4.

² Foley v. Fletcher, 769 at 785.

³ Perrim v. Dickson, 14 T. C. 608 at 614 and 516.

Proviso.—The proviso to subsection (1) applies only to compulsory deductions made under the authority of Government and not to compulsory deductions by other employers (see paragraphs 23 and 24). The amount exempted under this proviso has, however, to be taken into account under section 16 (1) in computing the total income of an assessee for the purposes of determining whether he is liable to tax and the rate at which he is to be assessed. An assessee, for example, who has a salary of Rs. 180 per mensem or Rs. 2,160 per annum and from whose salary a compulsory deduction is made by the authority of Government of Rs. 300 per annum of the nature referred to in this proviso is liable to pay income-tax on Rs. 1,860 at the rate applicable to an income of Rs. 2,160.

Under section 58 of the Act this proviso does not apply to super-tax, *i.e.*, no allowance of this kind is made for super-tax purposes.

Rewards for passing language examinations are not taxable unless by the conditions of his employment the assessee is compelled to pass the examination. Where they are taxable, they are taxable as salaries and tax should be deducted at source. (See also paragraph 33.)

Honoraria or fees paid to Government servants by local bodies or private persons, companies, etc., for professional work, the whole of which are in the first instance credited to Government, after which the whole or part is drawn under proper sanction by the Government servant concerned on a bill, should be taxed as salary by deduction at source. They are obviously fees, commissions, or perquisites received in addition to salary and paid by or on behalf of Government.

For classes or portions of "salaries" which are entirely exempt from tax, see paragraph 17.

Income under this head is included in the income of the year in which it is received irrespective of the period in respect of which it was earned, with the exception that where an officer of Government or any other employee takes an advance of pay, the tax is not chargeable on the advance, but the tax is charged on the full salary of the month in which the advance is recovered by deductions without any regard to the deduction. In cases where the payment of an assessee's salary in advance or in arrears makes his income assessable at a rate higher than that at which it would otherwise have been assessed, he may be granted relief under section 60 (2).

A portion of a salary withheld under the orders of a Court is liable to tax.¹

This section applies only to annuities, etc., paid by Government etc., annuities under a will or paid by an Insurance Co. fall under section 12—"other sources".²

Salaries paid in India but outside British India.—Section 7 (2) makes chargeable, under this head, salaries paid from Indian Revenues to Government employees in any part of India and salaries paid by a local authority established in exercise of the powers of the Governor-General in Council. All servants of Government or of such local authorities are, therefore, liable to pay tax on their salaries if they are employed in any part of India and irrespective of their nationality.

The words "or any servant of His Majesty" in this sub-section were inserted in the Act of 1918, so as to bring all servants of the Crown, whether British subjects or not within the purview of this sub-section, on the ground that it seemed unnecessary to give to persons who were not British subjects specially favourable treatment which was not accorded to British subjects.

The pay of officers whose services have been lent to, and whose salaries are paid by, Indian States are not chargeable to income-tax under this section unless they are drawn or received in British India; but the leave allowances and pensions of such officers are chargeable to income-tax unless covered by any of the exemptions in paragraph 17. The Government of India recover contributions at fixed rates from the Indian States to meet the cost of leave allowances and pensions of officers in foreign service and make themselves responsible for paying the leave allowances and pensions of their employees earned in foreign service. The portion of salaries of Government officers serving in Indian States, which is paid in the first instance by the Government of India but is subsequently recovered from the State concerned, is not liable to income-tax.³

¹ I. T. Manual, paragraph 36, pages 187-188.

² *In re* Bijay Singh Dadhuria, A. I. R. 1930 Cal. 641.

³ I. T. Manual, paragraph 37, page 188.

Salaries, etc., paid outside India.—Under exemptions Nos. 20, 21 and 24 quoted in paragraph 17, leave allowances or salaries paid in the United Kingdom to, or drawn from any Colonial treasury by, officers of Government on leave or duty in the United Kingdom or in a Colony and the pensions of officers of Government residing out of India, which are paid in the United Kingdom or are drawn from any Colonial treasury, are exempt from tax. Similarly under exemptions 22 and 25 leave salaries or leave allowances paid in the United Kingdom or in a Colony to officers of local authorities or to employees of companies or of private employers on leave in the United Kingdom or in a Colony and pensions paid in the United Kingdom or in a colony to officers of local authorities, or to employees of companies or of private employers, provided such officers or employees are residing out of India, are exempt from tax. Vacation salaries paid in the United Kingdom or in a Colony to Judges of High Courts or of Chief Courts, to Judicial Commissioners or to other officers of Government when on vacation therein are also exempt from tax (vide exemption No. 23 in paragraph 17).

Pay and allowances drawn by officers from the Indian revenues, which are earned by them by service outside India are not liable to the tax unless they are drawn or received in India.¹

Rule 11.—In the case of income chargeable under the head "Salaries," where deduction is not made by or on behalf of Government, the person paying the salary shall send to the Income-tax Officer concerned a statement showing the name of the employee from whose salary the tax has been deducted, the period for which the salary has been paid, the gross amount of the salary, the deduction for a provident fund or insurance premia, and the amount of tax deducted. The person concerned shall on receiving from the Income-tax Officer the necessary Chalan for the amount of tax which is to be credited, pay that amount to the credit of the Government of India by remitting it into the Government Treasury of Branch of the Reserve Bank of India or of the Imperial Bank of India.²

8. The tax shall be payable by an assessee under
 Interest on securities. **the head "Interest on securities" in res-**
 P. 18, 39 **pect of the interest receivable by him on**

¹ I. T. Manual, para 38, page 189.

² I. T. Manual, Rule 11.

any security of the Government of India or of a Local 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 assessee¹:

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

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

P. 11.

The reference to the securities of a Local Government and the proviso about it were added by Act IX of 1922.

Local Governments did not issue securities before that time.

The first proviso was added by Income-tax Amendment Act XVIII of 1933.

Scope.—This section corresponds to Schedule C of the English Income-tax Act¹ but it would appear that this section read with section 6 (2) applies only to the following categories of interest :

(1) interest received on any security of the Government of India or of a Local Government.

¹ Halsbury's Laws of England, vol. 16, page 639.

(2) Interest on debentures or other securities for money raised by or on behalf of—

(a) local authority,

(b) a company.

Interest on securities.—In computing the income from interest on securities an allowance should be made of any commission deducted by a banker for realising such interest on behalf of the assessee.

The interest chargeable under the section is the interest only on securities of the Government of India or of a local Government or on debentures or other securities for money issued by or on behalf of a local authority or company. It does not include the interest on debentures issued by firms, associations, clubs, or individuals the interest on which is chargeable under section 10 or 12.

With reference to the second proviso the Government of India War Bonds, 1920, 1921, 1922, 1923, 1924, and 1928, 5 per cent. Loan 1945-55, Five-year 6 per cent. Bonds, 1926, Five-year 6 per cent. Bonds, 1927, Ten-year 6 per cent. Bonds, 1930, Ten-year 6 per cent. Bonds, 1931, Ten-year 6 per cent. Bonds, 1932, and Ten-year 5 per cent. Bonds, 1933, have been issued income-tax free.

The third proviso to this section prescribes that where a Local Government issues a security as income-tax free, the income-tax on the interest thereon shall be payable by that Local Government. So far as investors are concerned, therefore, securities issued income-tax free, whether by the Government of India or by Local Governments, stand on exactly the same footing, that is, income-tax is not payable on the interest received therefrom by the assessee, but the interest received therefrom is taken into account under section 16 (1) of the Act in determining the total income of the assessee for the purpose of deciding whether he is liable to income-tax and also for determining the rate at which he shall pay income-tax on his other income. It should be included in the total income of the year in which it is paid. The same remarks apply to Government securities purchased through the Post Office and held in the custody of the Accountant-General, Posts and Telegraphs (see paragraph 18). Super-tax is, however, payable by the recipient in respect of such interest, since, under section 58 of the Act, the provisos to this section do not apply to super-tax.

For interest on other securities, which are entirely exempt from tax, see paragraphs 17 (10), (11) and (27).

For interest on securities held by Provident Funds, etc., see paragraph 32.

The interest on securities held by a cooperative society is liable to income-tax. (See paragraph 18.)

Where a bank or other concern engaged in business similar to that of a Bank receives deposits of loans in the course of its business and invests the money so borrowed as occasion arises, it should be allowed in computing its liability to income-tax to set off the entire interest on such borrowings against its entire income liable to tax. No attempt should be made, for example, to allocate a proportion of the borrowed money to investments in tax-free securities and to set off the interest of such proportion against the tax-free securities instead of against the taxable income.

But (as an exception to the foregoing) in the rare cases in which there is definite proof (not a mere inference) that a certain sum was specially borrowed by a Bank or similar concern for the purpose of investment in tax-free securities and has been so invested, the interest on the money so borrowed should be set off against the interest on the tax-free securities and not against the income liable to income-tax.

Assessees other than Banks or similar concerns may set off interest on money borrowed specifically for investment in taxable securities or shares, and so invested against their income liable to tax taken as a whole, and not merely against the interest on such securities or the dividends on such shares. In all such cases there must be clear proof and not a mere inference that the money was specifically borrowed for such investment and actually invested. They cannot be allowed to set off against their income liable to tax interest on money borrowed for investment in tax-free securities and so invested.

Income-tax (but not super-tax) in respect of income chargeable under this head is deducted at the source. (Section 18 (3).)¹

Debentures.—“ A Debenture, though never, I believe legally defined, is included under one or other of the three

¹ I. T Manual, para 39, pages 189-190.

descriptions laid down by Bowen L. J., in *English and Scottish Trust v. Bruston*,¹ as (1) a simple acknowledgment, under seal, of the debt; (2) an Instrument acknowledging the debt and charging the property of the company with repayment, (3) an Instrument acknowledging the debt, charging the property of the company with repayment, and further restraining the company from giving any prior charge" (Stroud). But in the *British India Steam Navigation's* case, Lindley J., said "Now what the exact meaning of Debentures is, I do not know. I do not find any particular definition of it, and we know that there are various classes of instruments called "Debentures." You have mortgage Debentures which are charges of some kind of property, you have debentures which are bonds; you have a Debenture which is nothing more than an Acknowledgment of debt; you may have an instrument, which is something more. It is a statement by two directors that a company will pay. I think any instrument of that sort may be Debentures."²

In Indian Law no distinction is made between bonds under seal and other bonds. In fact, no particular importance is attached to the fixing of seal under any of the Indian Acts relating to contracts or debts.

Section 8 deals with debentures not only of companies as contemplated by the English definitions, but also debentures of a local authority.³

Receivable by him.—These words imply that the assessee should be legally entitled to receive interest, that is

¹ 2 Q. B. 700 (1892).

² 10 Ch. D. 530.

³ As to what constitutes a local authority, see sections 2 (12), 4 (3) (iii), 7 and 21 and Income-tax Manual, para 8, page 149.

to say he should be the owner of the particular securities concerned, and that it is not necessary that the interest could be actually paid. The fact that some one has acquired a charge over the corpus of the security does not make it any the less his property.¹

Deductions permissible under this section.—Before the enactment of the new proviso the only exceptions to assessment of interest on securities were those provided by the second and third provisos. The enactment of the first proviso has removed a long felt grievance by making commission paid by an assessee to a broker for the realisation of interest on security an admissible deduction. Formerly income-tax was payable by the holder of securities in respect of the entire interest receivable by him on the securities, and he was not entitled to any deduction in respect of commissions paid for realising it.² Such commission is now a deductible expense. It would, however, appear that only commission paid for realization of interest is deductible, the position of other expenses for collecting interest on securities is not altered and no such expenses are deductible and the decision in *Rajniti Prasad v. Commissioner of Income-tax* is good law against the deduction of all other expenses than the commission exempted by the first proviso. Thus where the assessee purchased certain securities and paid to the vendee the cost of these securities plus interest due from the last date on which interest was paid to the vendor up to the date on which the assessee purchased these securities, it was held that he

¹ *Mahadeo Ashram, In re*, A. I. R. 1927 Pat. (33).

² *A. H. Forves v. Commissioner of Income-tax, Behar and Orissa*, A. I. R. 1929 Pat. 419; 4 I. T. C. 1.; *Rajniti Prasad*, 4 I. T. C. 264; *Mahadeo Ashran Prasad*, 2 I. T. C. 281; A. I. R. 1927 Pat. 133.

cannot claim that this interest should be allowed as an admissible deduction.¹

Depreciation.—Nor can an allowance be made for loss arising from depreciation in the value of securities.²

Cooperative Societies and interest from investment in Government securities.—By a notification dated 25th August 1925 under section 60, the profits of a cooperative society have been exempted from income-tax. The notification however applies only to profits in the strict sense of the word as used in the Act, and does not include income derived from interest on securities or dividends. The intention of the Governor-General in Council in making the notification of 1925 was to exempt the profits accruing to cooperative societies from carrying on the business of a mutual cooperative society, upon the ground that a man cannot make a loss or profit out of himself, and in this way to encourage and foster cooperative societies which were brought into being as the result of a movement to improve the conditions under which cultivators of the land in India and Burma lived and worked. Mutual Cooperative undertakings have always been held liable to pay income-tax upon income derived from investment and house property.³ The Governor-General in Council, while the notification of 1925 was under consideration

¹ *Rajniti Prasad v. Commissioner of Income-tax, Behar and Crissa*, A. I. R. 1930 Pat. 4 I. T. C. 264.

² *In re Later Industrial Bank Ltd.*, A. I. R. 1922 Bom. 75; I I. T. C. 152; *Punjab National Bank v. Crown*, A. I. R. 1926 Lahore 373.

³ *New York Life Assurance v. Stykes*, 14 A. C. 381; *United Service Club, Simla v. Emperor*, A. I. R. 1921 Lah. 208; *Commissioner of Income tax v. National Mutual Life Association, Australia*, A. I. R. 1931 Bom. 448; 55 Bom. 687.

must have been aware that before the year 1925 it had been the practice of the Income-tax Authorities to assess and levy income-tax upon the income of cooperative societies derived from interest on securities, and in case of legislation following a continuous practice and repeating the very words on which the practice was founded, it may be presumed that the legislature in re-enacting the statute intended those words to be understood in their received meaning.¹ Profits derived from Mutual Cooperative business alone are therefore exempt under this section, and not profits derived from investment and property.²

Where, however, the investment of capital in property or securities is a necessary part of the business of the society, the profits would be exempt under the notification. Whether such investments are necessary part of the business of a cooperative society is in each case a question of fact, and in deciding that question of fact, the mere fact of the income appearing in the profit and loss account of the assessee would not be conclusive. The byelaws of a Cooperative Bank as amended in 1929, provided among its objects to "purchase and sell" Government Promissory Notes, and it was contended that interest from such promissory notes was profit of the Bank within the meaning of the notification of 1925, referred to above. In another case, under orders of the Government, the society was bound to keep a per cent of its total liability under call deposits in a liquid or fluid form and instead of keeping these fluid assets in their safe, they kept them in Government securities. The contention that income from

¹ Income-tax Commissioner v. Pamsel, 1891 A. C. 531; Madras Provincial Cooperative Societies Bank Ltd. v. Commissioner of Income-tax, Madras, Q. P. No. 44 of 1932.

² Commissioner of Income-tax, Burma v. Bengali Urban Cooperative Credit Society Ltd., A. I. R. 1933 Rang. 275 B.

such source was profit of a cooperative society was negatived as follows :—

“It seems to me impossible, at least without a great deal more information than has been presented to us, to say that these investments of more or less amounts for a longer or shorter time on the part of the bank in order to prevent their fluid assets from lying absolutely idle in their coffers formed part of the business of the Bank. It seems to me that they are in the same position as any private person who with a large credit balance in his private account desires to put it into a remunerative form which shall at the same time be readily realisable and therefore invests for shorter or longer periods in Government papers.”

and further :—

“The obligation on the Bank to keep 40 per cent of its total liabilities in a fluid form is in consequence of an administrative order of Government and does not oblige them, although it may permit them, to invest the fund at all and it seems to me that as they are to hold the fund in readiness to meet some particular liability which is specified, it cannot be said to be part of their business as a bank to invest these liquid assets in the interval.”¹

9. (1) The tax shall be payable by an assessee under Property. the head “Property” in respect of the P. 40, 42, 43. bona-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

¹ The Madras Provincial Cooperative Bank Ltd. v. Commissioner of Income-tax, Madras, 7 I. T. L. J. 272; A. I. R. 1933 Mad. 489 F. B; Madras Central Urban Bank Ltd. v. Commissioner of Income-tax, Madras, 52 Mad. 640 F. B.

as he may occupy for the purposes of his business, subject to the following allowances, namely :—

- P. 42. (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 ;
- P. 44. (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 ;
- P. 69. (v) any sums paid on account of land-revenue in respect of the property ;
- P. 10, 11, 12. (vi) in respect of collection charges, a sum not exceeding the prescribed maximum ;
- P. 17, 18. (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
 P. 49. under this sub-section shall in no case
 exceed the annual value.

(2) For the purposes of this section, the expression
 P. 41. "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 occupa-
 P. 41. tion 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.

History.—In the Act of 1886, income from house pro-
 perty was taxed under "other sources of income". There was
 no provision for deductions. A special provision was found
 in section 24 about houses occupied by the owner, which was
 as follows :—

24. (1) Where a building is occupied by its owner it shall be deemed
 a source of income within the meaning of this Act, and is liable to be
 assessed under this Act and shall be assessed at five-sixths of the gross
 annual rent at which it may reasonably be expected to let and in the
 case of a dwelling house, may be expected to let unfurnished.

Section 8 of the Act of 1918, which was analogous to
 the present section 9 dealt only with "income derived from
 house property", and not with income from property in
 general with a restricted definition like section 9. The
 section was not applicable to buildings other than residential,
 nor to lands appurtenant to buildings income from them
 being taxed under "other sources". Sub-clause (i) (iv) was
 further amended by Act XVIII of 1933.

Property.—The tax is payable under this head in respect of pro-
 perty consisting of any building or lands appurtenant to a building by the

owner of such property. Lands not attached to a building are not chargeable under this section. The income derived from vacant lands let out in urban areas for the purpose, e.g., of storing materials is chargeable to the tax under section 12.

Buildings or lands occupied by the owner thereof for the purposes of his own business are not liable to the tax under this head. This particular provision was inserted in order to avoid the unnecessary complications in previous Acts under which the annual value of such property was liable to the tax under this head and a corresponding deduction was allowed to the owner under the head "business" (Section 10).

It is to be noted that it is only the owner who is liable to pay tax under this head. Where a person derives an income from house property which he holds on lease, such income is chargeable under section 12—"other sources."¹

Property is to be taxed under this section and not under section 10, even in case of a person who deals exclusively in property. Income derived from property is a specific category of income and as such an individual or a company carrying on a business in dealing with property has been held to be taxable under this section.²

It will be observed that section 6 of the Indian Income-tax Act states that "the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely." Then come six heads of which the third is "property" and the fourth is "business". By section 9 "the tax shall be payable by an assessee under the head 'property' in respect of the bona-fide annual value of property consisting of any building 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"; and it goes on to lay down the

¹ Income-tax Manual, paragraph 40, page 191.

² *In re* Kaladan Surate Bazar Co. Ltd., 11 T. C. 50; 2 I. T. C. 251.

method in which the quantum of the tax is to be computed. It points out, for example, that 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, then one-sixth is to be the deduction for repairs. In like manner, a deduction is to be allowed for insurances. Questions of mortgage interest and ground rent are covered and there are specific provisions as regards allowance to be made for parts of the property being unoccupied from time to time. Again, it is to be noted that the "annual value" is to be deemed to be the sum for which the property might reasonably be expected to let from year to year so that this class of property is not to be taxed on the basis of *de facto* rent alone, and it is further provided that where the property is in the occupation of the owner for the purposes of his own residence the annual value is not to be deemed to be more than ten per cent. of the total income of the owner. These matters are mentioned to show that special computations which arise in the case of house property are dealt with under section 9 which is a particular, detailed and special scheme for ensuring that any property which comes within that section shall be taxed in a particular way.

Section 10 which deals with business—"profits or gains of any business carried on by him"—is also provided with certain rules as to allowances to be made before computing profits. These rules, in so far as they refer to house property, refer to "the premises in which such business is carried on" but with regard to insurance premiums, land revenue, rates and taxes refer to buildings and premises "used for the purposes of this business."¹

¹ The Commercial Properties v. the Commissioner of Income-tax, Bengal, 3 I. T. C. 21; 1928 Cal. 456; A. I. R. 1928 Cal. 436.

Property is a wide term but section 9 confines it to certain kinds of properties enumerated in it. The section corresponds to Schedules A and B of the English Act. Section 9 is not concerned with other kinds of property.

Buildings.—The term building is not defined in this Act. Generally, it means a house, an outhouse, hut, shed, or roofed enclosure whether used for human habitation or otherwise. It may be of masonry, bricks, wood, mud, metal, or any other material whatever.¹ A building has been defined to mean a house, hut or shed, or other roofed structure, for whatsoever purpose and of whatsoever material constructed, and every part thereof, but not to include a tent or other such portable and merely temporary structure.² A roof has been held to be necessary to constitute a building. Thus the enclosure of a space by a screen³ or a detached wall⁴ have been held not to come within the definition of a building. Thus a permanent Chabutra with roof thereon was held to be a building.⁵ Hoarding enclosing land used for preparing wood for hoarding⁶, a boiler cased in brick work partly underground⁷, a conservatory of wood and glass⁸, a temporary storehouse for building purposes⁹, wooden erection to shelter a weighing machine and refresh-

¹ Ayenger's Law of Municipal Corporations in British India, page 566.

² U. P. Municipalities Act, section 2 (2).

³ 28 All. 199.

⁴ 8 C. W. M. 487.

⁵ 1933 A. L. J. 1190, A. I. R. 1933 All. 637.

⁶ *Staughter v. Sunderland Corporation*, 65 L. J. 250

⁷ *Gery v. Black Lion Brewery Co.*, 55 J. P. 711.

⁸ *Hibbert v. Acton Local Board*, 57 I. R. 274 C. A.

⁹ *Fielding v. Khyt Improvement Commissioners*, 3 C. P. D. 272.

ment stall,¹ a wooden portable theatre² have been held not to be buildings in English cases. A building does not cease to be one, simply because it is not intended for human habitation. The distinguishing feature is that the construction should not be of a temporary nature.³ Thus a toll house has been held to be a building.⁴ An old railway carriage placed in a field may become a building if converted into a dwelling house.⁵

Land covered by buildings.—Presumably land covered by buildings goes with the buildings. Land appurtenant to a building includes the compound of a house and a garden or a pond that goes with the building. If the garden or the land attached to a building is separately leased, it cannot be regarded as land appurtenant to the buildings, and income from such garden or land would be taxed not under section 9 but under the head "other sources" under section 12. Appurtenant means usually enjoyed with or occupied with.⁶

Permanently settled land.—Profits from land wherever situate are liable to income-tax, and the fact that the land is situated in the area subject to permanent settlement does not absolve it from liability to income-tax; subject to exception provided by the Income-tax Act itself.⁷

¹ Southendon Sea Corporation v. Romanis, 70 L. J. (K. B.) 328.

² Newell v. Ormskirk Urban District Council, 1907 J. P. 119.

³ Duffin Corporation v. Irish Church Mission, 2 I. R. 387.

⁴ Tunstall Turnpike Trustees v. Lowades, 20 J. P. 374.

⁵ Hanrahan v. Leighonsea D. C. 2 K. B. 257. (See Ayenger's Law of Municipal Corporation in British India, *ibid*).

⁶ Bayley v. G. W.

⁷ King Emperor v. Raja Probhat Chander Barmah V., A. I. R. 1927 Cal. 433 F. B.

Owner, Limited ownership.—The word owner is not defined in the Income-tax Act but it is clear that the expression is not to be confined to denote only a full ultimate and legal owner. Such a narrow interpretation is not warranted by a correct interpretation of the Act. Thus where under a contract entered into with the Secretary of State for India a Railway Company was put in possession, management, and control of the Railway system and it was provided that the existing railways and subsequent extensions were to continue to be owned by the Secretary of State, that when fresh capital was needed, the company will have to obtain it primarily from the Secretary of State, who undertook to supply the same, that the Company were to receive a guaranteed rate of interest on the share capital and a certain share on their surplus profits, and that on the termination of the contract, the railways were to be handed back to the Secretary of State, the company to receive their capital in full, it was held that the company was the owner of the Railway system and all its premises for the purposes of income-tax and deductions permitted under it.¹ A widow, or other limited owner would come under the definition of owner in this section. The term owner has been defined as the person in whom the property is for the time beneficially vested, and who has the occupation or control or usufruct of it.² Owner does not include a tenant or it may be that a person who is himself a tenant in relation to one person, would be regarded as owner in relation to his tenants in respect to the same property. In such a case, the scheme of the section seems to suggest that

¹ The Burma Railway Co. v. The Secretary of State, 1 I. T. C. 140.

² Eglington v. Norman, 46 L. T. Q. B. 559.

only the ultimate owner is to be taxed, under this section leaving the intermediate owners to be taxed under section 12 under the head other sources; if circumstances warrant such taxation.

Occupancy.—Occupation is not equal to mere physical possession. It implies a general power of control or dominion over the premises. Occupation by a servant who is in possession of his master's premises by virtue of a contract to remain in possession on behalf of the master is not occupation by such servant. On the other hand when a person keeps a house furnished and ready to be used by him whenever it suits his convenience or pleasure, it is in his occupation. Occupation by a mere licensee who holds the premises merely at the pleasure of the licensor, and who has therefore no dominion or control is not occupation in law.¹

Nizam's State.—Certain villages formed part of one Jagir granted to an ancestor of the assessee, but owing to a distribution of villages two of them were allotted to the dominion of H. E. Highness the Nizam. Rent realized from the tenants of the said villages were brought into British India; it was held that such rents were taxable under this section.²

Deductions allowed in respect of property.—It is to be particularly noted that, as stated in paragraph 69, no deductions are permissible on account of any municipal or local rates or taxes in respect of property. Nor can any allowance be made for brokerage for raising loans on

¹ *Bradley v. Baylis*, 8 Q. B. D. 195; *Mc Lean v. Prechard*, 20 Q. B. D. 285; *Surendra Chandra Ghosh*, 45 Cal. 950; *Arnold's Corporations* pp. 11-13.

² *Commissioner of Income-tax v. Mohammad Nurulla Khan*, A. I. R. 1928 Nag. 146.

mortgages and legal charges relating thereto since such charges are in the nature of capital charges. The only deductions from the "annual value" permissible are those specified in section 9 (1).

Where an assessee is the owner of several items of property within the meaning of section 9 (1), the allowance admissible under that section should be worked out with reference to the annual valuation of the property taken as a whole and not item by item.

Ordinarily, no expenditure is allowed as a deduction in calculating income for the purposes of the Act except such expenditure as has been incurred solely for the purpose of earning that income. Under clause (iv) of sub-section (1) of section 9, there is no such restriction, so that a property owner is entitled to set off, against the annual value of property, the interest payable on a mortgage or other charge upon the property irrespective of the purpose for which the encumbrance was created.

The proviso to sub-section (1) of section 9 has no application to interest on money borrowed for business purposes even though such money may have been borrowed on the security of the assessee's property.¹

Proof of expenditure where deductions are claimed in respect of "property."—The allowance on account of repairs (viz., one-sixth of the annual value in the case specified in clause (i), and in the case specified in sub-clause (ii), the amount permitted by that clause) is a fixed allowance which should be granted without proof of the actual expenditure in any year and irrespective of the amount of such expenditure. It should also be allowed in full even when an allowance is given for 'vacancy' under section 9 (1) (vii). The allowances on account of the annual premium paid to insure the property against risk of damage or destruction or on account of annual charge or ground-rent or land revenue or of collection charges must be supported by proof of the actual expenditure. Interest that has fallen due on a mortgage or capital borrowed for acquiring the property, should, however, be allowed as a deduction even though it may not have been actually paid.²

Insurance deductions.—The only insurance deduction permissible is the amount of the annual premium paid to insure the property against risk of damage or destruction. In some cases owners insure against

¹ I. T. Manual, para 42, page 191.

² I. T. Manual, para 43, page 192.

loss of rent. Where an owner asks for an allowance on account of the annual premium for such insurance it should be allowed if such owner agrees to pay tax on any amount recovered from the insurance company. Where no such allowance is claimed or allowed tax is not to be charged on the amount recovered from the insurance company.¹

“Charge.”—Deduction should be allowed under this sub-section of (1) any interest on a mortgage or other capital charge with which the property is encumbered, (2) any ground rent to which it is subject, and (3) the amount of any interest payable on capital borrowed for the purpose of acquiring the property even if such interest payments do not take the form of charges attached to the property itself.²

9 (1) (iv).—The word “paid” has not been used in sub-clause (iv) of sub-section (1), unlike sub-clauses (ii) and (iii). Accrued interest which has not been actually paid is therefore an allowable deduction under this sub-clause. Nor is the sub-clause confined to interest on loans for business but applies irrespective of the purpose for which such mortgages or charges have been created.³

Mortgage.—A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability (Transfer of Property Act, Section 58 (a)) The various kinds of mortgages are enumerated in section 58 (b).

The term charge has not been defined in this Act but section 131 of Transfer of Property Act, 1882, defines charge as follows :—

“Where immoveable property of one person is, by act of parties or operation of law, made security for the payment

¹ Income-tax Manual, para 44, page 192.

² I. T. Manual, para 45, page 192.

³ *In re Behari Lal Mullick*, A. I. R. 1927 Cal. 563 F. B.

of money to another and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property." A charge is created by operation of law under sections 39, 55 (4), 55 (6), 72, and 95 of Transfer of Property Act. The said sections are given below for convenience of reference :—

39. Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred, the right may be enforced against the transferee if he has notice thereof, or if the transfer is gratuitous ; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Transfer where
third person is
entitled to main-
tenance.

55 (4). The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer ;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase money to a charge upon the property in the hands of the buyer, any transferee with notice of the non-payment, for the amount of the purchase money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

55 (6). The buyer is entitled—

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof ;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming, under him, to the extent of the seller's interest in the property, for the amount of any purchase money properly paid by the buyer in anticipation of the delivery and for interest on such amount ; and, when he properly declines to accept the delivery, also for the

earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

72.A mortgagee may spend such money as is necessary—

- (a) * * * * *
- (b) for the preservation of the mortgaged property from destruction, forfeiture or sale ;
- (c) for supporting the mortgagor's title to the property ;
- (d) for making his own title thereto good against the mortgagor ; and,
- (e) when the mortgaged property is a renewable lease hold for the renewal of the lease ;

and may, in the absence of a contract to the contrary, and such money to the principal money at the rate of interest payable on the principal, and where no such rate is fixed, at the rate of nine per cent. per annum ;

Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title.

Where the property is, by its nature, insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property ; and the premiums paid for any such insurance shall be added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent. per annum. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by

or on behalf of the mortgagor to the amount in which the mortgagor is hereby authorized to insure.

95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

Rights of redeeming co-mortgagor to expenses.

A charge may be created by act of parties, by acts *inter vivos* or by will, or by a decree of court. But a mere deposit of title deeds does not amount to a charge outside places (Presidency Towns and Rangoon) in which it amounts to an English mortgage under section 59 of T. P. Act.¹

Allowances payable to junior members of a family owning an impartible estate, which are in the nature of a charge on the property are to be deducted in computing the taxable income of the holder of the impartible estate.² Maintenance allowance payable to step-mother which is declared a charge on property by a decree of court, is likewise to be deducted in computing the taxable income of such property.³

Collection Charges : Rule 7.—Under section 9 (1) (vi) of the Act, the sum to be allowed in respect of collection charges shall not exceed 6 per cent. of the annual value of the property.⁴

P. 16.

¹ *Basant Lal Takhat Singh v. Commissioner of Income-tax, U. P.*, A. I. R. 1932 All. 451; 7 I. T. L. J. page 63.

² *Kishen Kishore v. Commissioner of Income-tax, Lahore*, A. I. R. 1933 Lahore 284.

³ *Raja Bijoy Singh Daduria v. Commissioner of Income-tax, Bengal*, 6 I. T. C. 450.

⁴ I. T. Manual, Rule 7.

As regards Collection Charges rule 7 above fixes 6 per cent. of the annual value as the maximum amount permissible. Where a house has remained vacant for a period, this maximum, of course, would never be reached and in many cases there will be no collection charges. The maximum amount permissible should be reduced in all cases where a house has remained vacant for a period to 6 per cent. of the annual value as diminished by the amount allowed in respect of vacancies. Proof must always be given of the collection charges having been incurred. Rule 7 simply provides that, where there is proof of collection charges, such charges may be allowed subject to the provision that in no case shall the amount allowed on account of collection charges exceed 6 per cent. of the annual value.

Legal expenses incurred in recovering rents from tenants should be treated as a permissible deduction included in collection charges subject to the following conditions :—

- (a) Only net legal expenses, that is, expenses after deducting any costs recovered from the opposite party will be deducted.
- (b) The actual expenses incurred in excess of the costs deducted will be allowed in the year in which the decree is passed; a further allowance for costs proved to be irrecoverable will be given later, if necessary.
- (c) The total allowance for collection charges including legal expenses allowed must, of course, not exceed the statutory 6 per cent.¹

Deduction for unrealised rent.—Unrealised rent on any property is exempt from income-tax and is also excluded in computing the total income of an assessee, provided that—

- (a) the tenancy is bona fide;
- (b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;
- (c) the defaulting tenant is not in occupation of other property of the assessee; and

¹ I. T. Manual, para 46, page 193.

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent.¹

Deduction of collection charges can be allowed only if actually incurred and that too upto the sum not exceeding the prescribed maximum²

Collection charges include legal expenses necessary for such collection.³ No depreciation allowance is permissible under this section.

Allowance in respect of vacancies.—No fixed rule can be laid down regarding the allowance to be granted in respect of vacancies under clause (vii). Property is taxed on the "annual value" which, as noted above, is the commercial rent of a house—the rent which it would fetch if let by the year. Where the property is let at an annual rental corresponding to the annual value it would be fair to allow a proportionate deduction corresponding to the period of the vacancy, that is, if it were vacant for half the year, half the annual value might be allowed. Property may be let on short lease for a period less than one year and fetch a rent for that period far in excess of what has been fixed as the "annual value", and in such cases no allowance obviously can be given. Where a claim is made on account of vacancies, the owner should be asked to state what the actual rental was that he had received for the period of the year during which the property was let and the amount allowed on account of vacancies should, under no circumstances, exceed the amount by which the rent received falls short of the annual value. There can, of course, be no allowance in connection with any property which is reserved by the owner for his private occupation. A claim on account of vacancies can only be entertained in connection with property that is usually let.⁴

The word vacancy is used in the sense of non-occupation. A building is vacant when neither the owner nor his

¹ I. T. Manual, para 47, page 193.

² *In re Maharaja of Darbhanga*, A. I. R. 1931 Pat. 223.

³ *In re Tata Iron and Steel Works*, 45 Bom. I. L. R. 1306.

⁴ I. T. Manual, para 48, pages 193-194.

relations or friends occupy it, nor is it let out to any tenant or lessee.¹ Thus where a house is kept ready for use and occupation by him, though not actually used by him, it is in his occupation and not vacant, no allowance can be claimed in respect of it.²

Proviso—Annual Value cannot be minus sum.—The proviso to section 9 (1), that the aggregate of the allowances made under that subsection shall in no case exceed the annual value, was inserted owing to the new provision in section 24 providing for the set-off of losses under one head against income, profits or gains under any other head. Instances have occurred of buildings situated in extensive grounds or on valuable sites being mortgaged for sums the interest on which is far in excess of the "annual value." The result of this proviso is that the annual value of the property belonging to an assessee can in no case be reduced to a minus sum owing to the allowances, and that there can be no loss under this head to be set against income, profits or gains under any other head.³

Annual Value.—The tax is under the head "property" chargeable in respect not of any actual rental or cash received, but of the "bonafide annual value." The bonafide annual value of a building is the full market value at which the building could be let from year to year,⁴ irrespective of any charges by way of municipal rates or taxes thereon. It therefore differs from the actual annual rent payable on a long term lease or the actual rent payable on a yearly lease under a privileged rental or with tenant's liability to pay owner's rates or taxes. Where a house is let out on an inadequate or a nominal rent out of love, the assessee will be taxed not on such inadequate or nominal rent, but on the annual rent.⁵

¹ *Upendra Nath Basu v. Municipal Board of Benares*, A. I. R. 1934, page 1148.

² *Sree Krishna Chandra Gajapati Narayan*, 91 I. C. 940; *Commissioner of Income-tax, Madras v. Narain Deo*, A. I. R. 1926 Mad. 287.

³ I. T. Manual, para 49, page 194.

⁴ *In re Chunnamal Salagram*, A. I. R. 1931 Lahore 320.

⁵ *In re Gupta Estate*, A. I. R. 1930 Cal. 1; *Krishna Lal Sil v. Commissioner of Income-tax, Calcutta*, A. I. R. 1932 Cal. 886; 7 T. L. J. 156.

The only limitation on taking the full market value is that in cases where the property is in the occupation of the owner for the purposes of his own residence the annual value is restricted to a maximum of 10 per cent. of the "total income" of the owner. The phrase "total income" in this definition has the meaning given to it in section 2 (15) of the Act, viz., income, profits and gains of such owner from all sources to which the Act applies and, therefore, does not include income derived from any other sources specified in section 4 (3) of the Act (such as, for example, "agricultural income") which are exempt from the tax.¹

Income of property is to be ascertained by finding out the sum for which the property might reasonably be expected to let from year to year. Where the immovable property consists of a number of market stalls, this is to be done by ascertaining the annual value of each of the stalls which in the aggregate make up the property to be assessed. In determining what the annual value is, regard must be had to the facts of the particular case under enquiry. One of such facts is the actual daily rent for each of the stalls.²

Residence.—The word "residence" in its simple and ordinary meaning signifies the place where a human being eats, drinks and sleeps or where his family and servants eat, drink and sleep, and where there is some permanence or continuance of such eating and sleeping. The word as used in section 9 (2) cannot be given an extended meaning so as to include the place of business of a limited liability company. Where, therefore, a building owned by a mutual benefit liability company is partly used for office purposes and is partly let out to the members for the business of the company, the building cannot be said to be in occupation of the

¹ See Income-tax Manual, para 41, page 191.

² Commissioner of Income-tax, *Burma v. Suratee Bara Bazar Co. Ltd.*, A. I. R. 1931 Rang. 99.

owner for the purpose of his own residence within the meaning of proviso to section 9 (2), Income-tax Act.¹

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

Business.

P. 50, 52, 66.

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

P. 50, 53, 54.

(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 ;

P. 55.

(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 ;

P. 56.

(iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent

P. 57.

¹ Calcutta Stock Exchange Association v. Commissioner of Income-tax, Bengal, 1935 I. T. L. J. page 148 ; see also Bombay City North Case, 2 I. E. P. page 53 ; Rogers on Elections, Vol. 1, pages 15, 16, 17, I. E. P. Vol. 4, page 1.

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, stock or stores, used for the purposes of the business, the amount of any premium paid ;

P. 58.

(v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof ;

P. 56.

(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 :

P. 59.

R. 8-9.

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 ;

P. 60. (vii) 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, 1886, and the amount for which the machinery or plant is actually sold, or its scrap value ;

P. 61. (vii-A) 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.

Scope.—Section 10 (1) makes the section solely applicable to profits or gains of any business carried on by the

assessee. It does not deal with profits or gains of an assessee generally from whatever source derived.¹ The rest of the section deals with the mode in which profits of a business are to be arrived at. Section 10 (1) is to be read with section 4 (1) which lays down the conditions under which all income, including income from business is to be taxed.

The word "any" in this section means "each and every."²

By an assessee—An association of individuals or a body of trustees is an unit for the purpose of taxation under this section read with section 3. Such an association of individuals or body of trustees is liable to tax in respect of business carried on by it.³ See also notes under the head assessee, section 2 (2).

A firm is an assessee in respect of the profits and gains of the business of the firm. A partner is not assessed with regard to the profits of the firm and therefore is not an assessee in respect of such profits.⁴

Business.—Any business in section 10 (1) means any business or businesses⁵ and collectively all the businesses carried on by the assessee in case he carries on more than one business. Profits or gains, in such a case mean the

¹ The Commissioner of Income-tax v. The Ballarpur Collieries, Chanda, 4 I. T. C. 255 ; A. I. R. 1930 Nag. 183.

² Commissioner of Income-tax, Madras v. A. A. Arunachalam Chettiar, 1 I. T. C. page 278 at 291.

³ Hotz Trust of Simla v. Commissioner of Income-tax, A. I. R. 1930 Labore 929.

⁴ Commissioner of Income-tax v. Ballarpur Collieries, Chanda, A.I.R 1930 Nag. 183 dissenting from A. I. R. 1924 Mad. 474 S. B.

⁵ Para 52, I. T. Manual, p. 197.

aggregate profits or gains of all the businesses.¹ The business carried on by him may be carried on solely or in partnership with others. As to the meaning of the term business see also notes to section 2 (14).

It was laid down in *Inland Revenue Commissioner v. Maxse* (XII, English Tax Cases, page 41) that "a profession involves the idea of an occupation requiring purely intellectual skill or manual skill controlled..... by the intellectual skill of the operator as distinguished from an occupation" (i.e., a business or trade) "which is substantially the production or sale of commodities." In this view a firm of architects or accountants or engineers cannot be regarded as carrying on a trade and should not be assessed as though they were carrying on a business.²

Business in this section means the particular business whose profits are being assessed in the year under consideration.³

Carried on.—The question to be decided in each case is what kind of business the assessee actually carries and not what he professes to carry on.⁴ Carrying on business is a compound of a variety of incidents.⁵ Repetition of acts is implied in carrying on business⁶, and the expression cannot be applied to an isolated transaction but that the business must be habitually and systematically exercised.⁷ Carrying

¹ *Commissioner of Income tax v. Suppan Chettiar & Co.*, A. I. R. 1930 Mad. 124 S. B.

² I. T. Manual, para. 52 (ii).

³ *Commissioner of Income-tax v. Somasundaram*, A. I. R. 1928 Mad. F. B.

⁴ *Commissioner of Inland Revenue v. Hyndland Investment Company*, 14 T. C. 694 at 699.

⁵ *Erichsen v. W. H. Last*, 4 T. C. 422 at 423.

⁶ *The Commissioners of Inland Revenue v. The South Behar Railway Co.*, 12 T. C. 657 at 77.

⁷ *Grainger and Lous v. Gough*, 3 T. C. 462.

on a business is not necessarily the same thing as controlling a business.¹ Thus where a company formed to acquire and carry on a Railway under a contract with the Government of India, relinquished possession of the railway to the Government in return for a fixed annuity, and after the relinquishment did nothing but receive and distribute the said annuity among the shareholders, it was held that the company carried on business.²

Profits or gains.—See also notes under section 4 supra. The term “income” when contrasted with “capital” means and includes not only income in its strict meaning, but also profits and gains. “Income” as contrasted not with capital but with “profits” or “gains,” in the Income-tax Act, means “a periodical monetary return coming in” and accruing to the assessee independently, and as the net proceeds of business carried on by the assessee as defined in section 2 (+) of the Act. “Income” in this sense connotes incomings without regard to outgoings. On the other hand “profits” in this connexion are the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts.

“The line between receipts which are not taxable as being the result of sale of capital assets, and receipts which, though receipts of sale, are taxable as profits of trade is stated by Lord Dunedin in the Privy Council in *Commissioners of Taxes v. Melbourne Trust Ltd.*, reported in (1914) A. C. 101 at page 1010, as follows:—Their Lordships think that the principle is correctly stated in the Scottish case quoted in

¹ *Kodak Ltd. v. Robert Clark*, 4 T. C. 549.

² *The Commissioners of Inland Revenue v. The South Behar Railway Co.*, 12 T. C. 657.

California Copper Syndicate v. Harris. It is a quite well settled principle in dealing with questions of income-tax that where the owner of an ordinary investment chooses to realise it, and obtains a greater price for it than he originally acquired it at the enhanced price is not profit in the sense of schedule D of the Income-tax Act of 1842 assessable to income-tax. But it is equally well established that enhanced values obtained from realisation or conversion of securities may be so assessable where what is done is not merely a realisation or change of investment, but an act done in what is truly the carrying in, or carrying out of a business.'.....¹

The test to be applied is whether the amount was "a gain made in an operation of business in carrying out a scheme for profit making."

"There are many things which in common colloquial English would not be called a business when carried on by a single person, which would be so called when carried on by a number of persons. For instance, a man, who is the owner of a house divided into several floors if used for commercial purposes, e.g., offices would not be said to carry on a business because he let the offices as such. But suppose a company was formed for the purpose of buying a building or leasing a house to be divided into offices and to be let but, should we not say, if that was the object of the company, that the

¹ This case was followed by the Privy Council in *R. V. Anderson Logging Company Limited*, reported in (1916) A. C. 140. Illustrations of the two classes of cases as regards sale of land may be found in *Stevens v. Hudson's Bay* (price of land not taxable) and *Thew v. South West African Co. Ltd.* (price taxable as proceeds of sale). Cases of taxation on the profits of realisation by sale of one and the only asset will be found in *Martin v. Lowry* reported in (1927) A. C. at page 312, and the *Cape Brandy Syndicate v. Inland Revenue Commissioners* reported in (1921) 2 K. B. at page 403.

company was carrying on business for the purpose of letting offices? The same observation may be made as regards a single individual buying or selling land with this addition that he may make it a business and then it is a question of continuity. When you come to an association or company formed for a purpose, you will say at once that it is a business because there you have that from which you would infer continuity. So in the ordinary case of investments a man who has money to invest, the object being to obtain his income invests his money and he may occasionally sell the investments and buy others but he is not carrying on a business."¹

The assessee, a landowner and money-lender, purchased the interest of certain persons in legacies forming subject matter of litigation. After a protracted litigation he realised some profits from the transaction. Held that these profits being from an isolated transaction not connected with assessee's trade or business activities, were not assessable to tax.²

Premia on issue of shares.—The premia received by a company on issue of shares are capital receipts, and, as such, not chargeable to tax. In the same way the cost of issuing shares is capital expenditure and cannot be allowed as a deduction for income-tax purposes.³

Section 10 (2).—This sub-section deals with the various deductions that are allowed to an assessee in computing profits. The section does not define profit but provides how they are to be ascertained by enumerating the various heads of income which are to be excluded. In this respect the law

¹ Per Jewell M. R. in *Smith v. Anderson*, 15 Ch. D. 285.

² *R. B. Mothay Gangaju Garu v. Commissioner of Income-tax, Madras*, 1935 I. T. L. J., page 134.

³ I. T. Manual, page 210, para. 66.

in India differs from the law in England. The English law deals with various allowances that cannot be deducted, while the law in India enumerates the various allowances that can be deducted.¹

Business deductions. General.—While, as stated in paragraph 50, it is not possible, owing to the variety of accounting systems, to prescribe exhaustive lists of deductions that are or are not permissible in the case of all businesses, section 10 (2) contains a list of allowances that are permissible in the case of all businesses. The following is a list of the deductions that are not permissible in the case of any business whatever the system of accounting may be that is adopted :—

- (a) Reserves for "bad debts" or for "provident" or other funds or any other purpose such as the equalisation of profits or dividends;
- (b) Expenditure of the nature of charity or presents;
- (c) Expenditure of the nature of capital;
- (d) Cost of additions to, or alterations, extensions or improvements of, any of the assets of a business ;
- (e) Sums paid on account of income-tax or super-tax in India or elsewhere or any tax levied by any authority other than land revenue, local rates or municipal taxes in respect of the portion of the premises only which is used for the purposes of the business. The question whether a salary paid to a partner is an admissible deduction for purposes of income-tax, or in other words the question whether a so-called "salary" paid to a "partner" is really a salary or simply an allocation of profit, is a question of fact to be determined in each case, with reference to the circumstances ;²

¹ Rowe & Co. v. Secretary of State, 1 I. T. C. 161.

² See Electrical and Dental Stores v. Commissioner of Income-tax, Punjab, V, Srinivasan's Tax Cases, pages 254—257, Lahore High Court.

- (f) Interest on the proprietors' or partners' capital including interest on reserve or other funds;¹
- (g) Private or personal expenses of the assessee;
- (h) Rental value of property owned and occupied by the owner of a business for the purposes of the business;
- (i) Losses sustained in former years;
- (j) Any loss recoverable under an insurance or a contract of indemnity,
- (k) Depreciation of any of the assets of the business other than the depreciation allowed under section 10 (2) (vi);
- (l) Any sums 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;
- (m) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.²

Onus of proof.—The onus of proving that certain allowances claimed by him come within the deduction permitted by this section is on the assessee claiming such allowances.³

The separate heads of allowances given in section 10 (2) must be treated as disjunctive and cumulative and not as alternative and exclusive. Nor can the general revision in section 10 (2) (vi), be construed as extinguishing

¹ Cf. Allahabad High Court Case No. 223 of 1923, in the matter of Lalla Mal Hardeo Das Cotton Spinning Mill Co. of Hatbras, I. Srinivasan's Tax Cases, page 266.

² I. T. Manual, para 53, pages 197-198.

³ Nope Chand Mangee Ram, 2 I. T. C. 146; A. I. R. 1933 Mad, 489 S. B.

the right to deductions which are specifically outlined and defined in the other subsections.¹

10 (2) (i): Rent.—The allowance referred to in this clause is only in respect of that portion of the premises in which the business is carried on and the same limitation applies to all allowances relating to premises or buildings in clauses (ii), (iv), (v), (vi), and (viii). Where premises are owned by the owner of the business, of course no allowance on account of rent is permissible since the owner is not liable to pay tax on the annual value of such premises under section 9. Where the trader resides in a part of the business premises, the full rental cannot be set against the profits and the Income-tax Officer must, in each case, determine the portion of the rent that may be so set off.²

It would appear that allowance for rent can be made where an assessee carries on business in a rented house, to the extent of the rent paid subject to the further provision that where a substantial part of the house is used by him for his own residence, the allowance shall be a proportion determined by the Income-tax Officer. According to section 10 (3) the word "paid" means actually paid or incurred, and unless the rent is found to have been paid within the meaning of section 10 (3) no deduction can be allowed under this head. In allowing deduction for rent, no question of annual letting value of the premises arises, and no trader will be entitled to any deductions by way of rent calculated on the basis of annual letting value of the premises, if the building is not rented by him and rent paid for it, but say belongs to him. The contrary view, expressed in Rajagopala Aiyar's Income-tax Act, page 211 (1931) based as it is on English decision is, it is respectfully submitted not good

¹ Rathan Singh v. The Commissioner of income-tax, Madras, 2 I. T. C. 294.

² I. T. Manual, para 55, page 193.

law so far as India is concerned. Nor is the case of John & Company and another¹ any authority for the proposition. The case was one under sections 8, 9 and 11 of Act VII of 1918. Section 9 (2) of the said Act permitted a certain allowance on account of the annual value of business premises owned by the assessee, and it was sought to tax such allowance under section 8 which dealt with house property. It was held that such allowance was not liable to tax under the head of house property. There is thus no authority in the Indian Income tax law for the proposition that allowance is to be made for the annual value of business premises in cases where such premises are owned by the assessee.

Premises.—The word premises has not been defined. It may be said to mean a building with its appurtenants, compound, etc. A colliery has been held to be premises.²

Dwelling house.—The expression “used as a dwelling house by the assessee means that it is kept ready to be used as such, the assessee need not necessarily be actually residing in it.”³

Substantial Part.—In each case it is a question of fact as to what amounts to a substantial part of the premises for the purposes of this sub-section.

Allowances on account of repairs of business premises.—Where the assessee is himself the owner of his business premises, he is allowed as a deduction the amount spent on repairs each year on the portion of the premises used for the purposes of the business under section 10 (2)

¹ 1 I. T. C. 61; 18 A. L. J. 1018.

² *In re Isabela Coal Co.* 29 C. W. N. 927.

³ *Lewin v. George Newnes*, 90 L. T. 160; see also notes under section 9 *supra*.

(v); where he is the tenant of the premises, he is, under section 10 (2) (ii), allowed the amount expended by him on repairs if his lease require him to execute repairs. Where the premises are occupied partly as a residence and partly for the purposes of a business, the same proportion of the disbursements on repairs should be permitted to be deducted as is taken in calculating the rent permissible under section 10 (2) (i).

The phrase "current repairs" in section 10, sub-section (2) (v) should be interpreted to mean such repairs required to keep building, machinery, plant and furniture, in serviceable condition, as are rendered necessary by ordinary wear and tear (as opposed to accidental or wilful damage or other unusual causes) and are of their nature recurrent (supposing that the owner displays reasonable care and prudence in keeping the asset, whatever it may be, in good order) at comparatively short intervals—say, at least, once in two or three years. It also includes minor replacements (in respect of which it would be absurd to expect an entry to be made in a block account or similar record or in any records maintained for the purposes of calculating depreciation) and also mere adjustments of existing parts and in the case of machinery or plant, any replacement or renewal which is not so extensive as to destroy its identity.

Expenditure on anything that, if it had been done when the asset was new, would have increased its capital value should be regarded as capital expenditure.¹

Business—Allowance in respect of borrowed capital.—The allowance under this clause can only be given where payment of the interest is not in any way dependent on the earning of the profits. It cannot be allowed, therefore, in respect of any borrowings the interest on which is not payable unless profits are earned or the interest on which varies according to the amount of the profits earned. In all cases it will be a question of fact whether the payment of interest is or is not actually dependent on the earning of profits. No allowance can be made in respect of the share capital of companies or of the capital put into a firm by the partners; but a company is entitled to an allowance of the interest paid on its debentures and a firm to an allowance of the interest of money borrowed under a mortgage. On the other hand, a

¹ I. T. Manual, para 56, pages 199-200.

firm alleging that it has no independent capital and that it is working only on capital lent by the partners at a definite rate of interest which must be deducted from the earnings of the firm before its profits can be declared, is not entitled to allowance under this section unless definite proof is given that a particular partner has made a legal loan to the firm, i.e., a loan under an instrument on which he can sue and under which interest at a fixed rate is to be paid to him annually irrespective of the earning of any profits.¹ Similarly the share of profits given to Mohammedan depositors in lieu of interest on borrowed capital cannot be allowed as a business expense.²

Borrowed Capital.—The expression “capital borrowed for the purpose of business” applies to capital borrowed for the purpose of business and used for such business.³ The Madras High Court has held that⁴ business in this sub-section means business whose profit is being taxed, and no deduction is to be allowed in respect of interest paid for capital borrowed for being sent outside British India the profits of which are not brought into British India and assessed to Indian Income-tax. The Lahore High Court held a different view, and decided that interest paid in British India for capital borrowed here for the purpose of a foreign business carried by an assessee in a foreign country, is a permissible deduction under this sub-section, and the assessee did not lose this right, merely because he did not bring into British India his foreign profits for the accounting period or

¹ Cf. Allahabad High Court Case No. 223 of 1923, in the matter of Lalla Mal Hardeo Das Cotton Spinning Mill Co. of Hathras, I. Srinivasan's Tax Cases, page 266.

² I. T. Manual, para 57 (1), page 200.

³ The Commissioner of Income-tax v. M. T. T. K. M. S. M. A. R. Somasundaram Chettiar, 54 M. L. T. 436, 2 I. T. C. 505; Commissioner of Income-tax v. Subramanian Chettiar, A. I. R. 1928 Mad. 923; 55 M. 4 J. 416 F. B.

⁴ 2 T. C. 505 above.

for three preceding years in their entirety, provided that the permissible deduction should be allowed subject to the limitation that the amount to be set off did not exceed the amount brought into British India and taxed in the accounting period.¹

Only interest on such capital is to be allowed as is borrowed for the purpose of carrying on a business from which profits may ensue. Unless it is such a business, deduction for interest on capital money borrowed for that business cannot be allowed.² Thus interest on money borrowed by a private individual as distinguished from a person carrying on a business cannot be deducted from taxable income.³

Again, in order to claim an allowance in respect of interest paid on borrowed capital it must be interest paid during the year of account. It may be interest actually paid in cash, or it may be adjustment which is the mercantile basis of accounting, whichever method is adopted.

Where loans are taken on tavanai system, the interest due at the end of each tavanai should be treated as interest paid and added to the principal and no allowance can be granted in respect of tavanai period not ending in the year of account.⁴

A Nattukhottai Chetty firm carried on the usual Nattukhottai Chetty business of banking and moneylending, and

¹ Harkishan v Commissioner of Income-tax, Punjab, A. I. R. 1930 Lahore 982.

² A. I. R. 1932 Bom. 94.

³ Mahadeo v. Commissioner of Income-tax, A. I. R. 1927 Pat. 133, 6 Pat. 29.

⁴ Commissioner of Income-tax, Madras v. Pethuperumal Chettiar, A. I. R. 1929 Mad. 34 F. B.

also by a separate branch a piecegoods business, the accounts of both branches being kept separate. The piecegoods branch was unsuccessful and was closed and did not function in the year of account. The business of the assessee was carried on on borrowed capital part of which was invested in piecegoods business. It was held that neither the fact that the piecegoods business was conducted under a separate village, nor the fact that separate accounts were kept in respect of the banking business and piecegoods business, justify the inference that there were two separate and distinct businesses. As to whether allowance could be granted for interest paid for the capital invested on a branch of business which had closed down in the year under assessment, the High Court held as follows :

“The second point taken was that, as the piecegoods business had been shut down in the year 1924, and did not function in the year of assessment 1924-25, it cannot be said that the capital which had been borrowed was employed in the business during the year of assessment. The money was borrowed for the purposes of business and was employed in the business for its purposes until it was lost. Nevertheless interest had to be paid on it and the test seems to us to be not whether it continued to be available for the purposes of business during the year of assessment, but whether it was in its origin money borrowed as capital for the assessee's business and whether interest was in fact paid on that borrowed capital (existing or lost) during the year of assessment.”¹

Payment of interest not dependent on the earning of profit.—An assessee is entitled to a deduction to the extent

¹ The Commissioner of Income-tax, Madras v. A. L. A. R. Brothers, A. I. R. 1928 Mad. 1229; 3 I. T. C. 209.

of amount of interest paid only when the payment of interest is not dependent on the earning of profit.

Where a person borrows business capital from others and agrees to pay to them for interest a certain percentage of profits without making them liable for losses, the sums so paid cannot be exempted from income-tax under this sub-section.¹

Partnership Capital.—"By the capital of a partnership is meant the aggregate of sums contributed by its members for the purpose of commencing or carrying on the partnership business and intended to be risked by them in that business. The capital is a sum fixed by the agreement of partners, but the actual assets of the firm vary from day to day, and include everything belonging to the firm and having any money value, e.g., goodwill. The capital of each partner is not necessarily the amount due to him from the firm; for not only may he owe the firm money, so that less than his capital is due to him, but the firm may owe him money in addition to his capital.²

Subject to a contract between the partners the property of a firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.³ The capital originally contributed cannot be altered except by acquisition by or for the firm, except with the consent of all partners.⁴

¹ Commissioner of Income-tax, Bombay v. Haji Jamal Nurmohammad & Co., 1 I. T. C. 396; A. I. R. 1925 Bom. 351.

² Lindley on Partnership, 9th Edition, page 407(9).

³ The Indian Partnership Act IX of 1933, section 14.

⁴ Bridgewater Navigation Co., 2 Ch. 317 at 327.

“So far as additional or surplus capital is concerned no partner is bound to advance any particular sum.....It is clear, therefore, that what is called surplus capital has different characteristics from the initial capital and it is not open to ignore this difference. The fact that a large business was contemplated for which small initial capital would not be enough and additional capital would therefore be required has really no bearing on the legal aspect of the question, additional capital having different incident from initial capital. Moreover however high may be the proportion one partner may contribute in the form of additional capital relatively to the other partner, it will have no bearing on the proportion in which the profits are to be taken. This again shows that it is not open to regard additional capital as really initial capital.”¹

Interest on loans by Partners.—Interest paid on money lent by a partner in addition to initial capital at reasonable rate of interest and used as capital expenditure in partnership business, is a permissible deduction under this subsection.² But an advance made by a partner in addition to initial capital, does not bear interest in the absence of a contract, or a course of dealings.³ So where there was no agreement entered into before the partnership was started to lend any money nor was there any agreement to pay interest, it was held that as there was no express agreement to pay

¹ The Commissioner of Income-tax, Madras v. A. L. Chetty, R. L. Subramanian Chettiar, 3 I. T. C. 187; 51 Mad. 787.

² Commissioner of Income-tax v. K. K. C. T. Chettyar Firm, A. I. R. 1930 Rang. 249 F.B.; Bhola Shah Narsingh Das v. Commissioner of Income-tax, Punjab, A. I. R. 1930 Lahore 738; A. I. R. 1933 Sind 192; A. I. R. 1933 Mad 347 F. B.

³ Umamaheshwari Mudali V. Muniswami Mudali, 50 M. L. J. 428.

interest, interest paid to the creditor partner was not an allowable deduction under this sub-section.¹

In order to claim an allowance in respect of interest paid on borrowed capital it must be interest paid during the year of account. It may be interest actually paid in cash which is the cash basis of accounting, or it may be by adjustment, which is the mercantile basis of accounting whichever method is adopted. Where loans are taken on tavanai system, the interest due at the end of each tavanai should be treated as interest paid.²

In such cases, *i.e.*, where interest is paid to a partner on capital advanced over and above the initial capital with an agreed rate of interest the payment of interest cannot be said to be in any way dependent on the earning of profits.³

Partner's Salaries.—The drawings of partners by whatever name described, are part of profits and salaries paid to the partners of a firm are not admissible as deductions in the computation of the profits of the firm.⁴

Mudibhagidars—Interest on advances by.—Interest on advances made by persons as Mudibhagidars who receive certain specified shares in the profits of the firm in lieu of interest, but are not responsible for losses is not an allowable

¹ Periasamy Nadar v. Commissioner of Income-tax, Madras, A. I. R. 1930 Mad. 1003 F.B.

² Commissioner of Income-tax, Madras v. Pethuperumal Chettiar, A. I. R. 1929 Mad. 34 F. B.

³ Commissioner of Income-tax v. K. K. C. T. Chettyar Firm, A. I. R. 1933 Rang. 249 F.B.

⁴ Chief Commissioner of Income-tax, Madras v. Vegaraju Venkatasubhaya Garu, 1 I. T. C. 176.

deduction under this sub-section, as the payment of interest to them is dependent on the earning of profits.¹

Guaranteed interest and interest on borrowed capital.

—The Bengal Nagpur Railway Company was assessed to income-tax on an income made up of (1) the Company's surplus profits, and (2) the guaranteed interest, the item No. (2) being made up of (a) the interest debitable to the undertaking of the Secretary of State's open line capital, (b) the payment to the Secretary of State of the amount of the guaranteed interest payable by him to the Company in England on the share capital of the Company which the Company by agreement had made over absolutely to the Secretary of State, and (c) the amount payable on account of interest on debenture stock and debentures.

Held, that the liability to pay the tax must be determined with reference to the special agreement between the two parties and the nature of their relation to one another, and that the Company is liable to income-tax in respect of only of item No. (1) representing its share of surplus profits which it gets in return for its services in the management of the Railway and is not liable in respect of item No. (2).² But a different view was taken in the *Madrass & Southern Mahratta Ry. Co. Ltd. v. the Commissioner of Inland Revenue*. The facts are as follows:—A Company was formed to enter into a contract with the Secretary of State for India for the purpose of the construction and carrying on of a Railway in India, for which part of the capital assets were provided by the Secretary of State. Under the contract

¹ *Commissioner of Income-tax v. Nagi Jamal Aurmohammad & Co.* 1 I. T. C. 396.

² 1 I. T. C. page 178.

between the Secretary of State and the Company (i) the Secretary of State guaranteed $3\frac{1}{2}$ per cent. interest on the capital; (ii) all moneys received by or on behalf of the Company had to be paid into the Bank of England, to the credit of the Secretary of State, or into a Government Treasury in India; (iii) the moneys received by the company on account of the revenue, after payment of expenses and of the equivalent in rupees of the interest paid by the Secretary of State to the company in respect of certain of the company's debentures and debenture stock, were to be divided between the Secretary of State and the company in proportion to the respective shares of capital contributed by them; and (iv) out of the company's share of such surplus receipts, the Secretary of State was entitled to deduct and retain the equivalent in rupees of the guaranteed 3 per cent. interest but if such share of surplus receipts in respect of any such year shall be less than the guaranteed interest of such year, the Secretary of State was not entitled to deduct the deficiency from the surplus of any subsequent year. As a matter of fact the *prima facie* share of profits of the company exceeded the amount which the Secretary of State had paid under the guarantees. The company contended that the guaranteed interest paid by the Secretary of State which he was entitled to deduct and retain from the company's share of the surplus receipts did not form part of its profits for purposes of Corporation Profits Tax.

Held, that the guaranteed interest paid by the Secretary of State formed part of the company's profits for purposes of Corporation Profits Tax, and that the company's recoupment of such interest to the Secretary of State out of its share of surplus profits was a distribution of profits within the prohibition of deduction from profits in section 53 (2) (b) of the Finance Act 1920.

Rowlatt J. said: "The Secretary of State is recouped out of what is called the company's share of the surplus receipts and.....the extent of his recoupment depends upon the amount of the profits.... I think it is a distribution of profits. It is a distribution of profits in recoupment of a guarantor who guaranteed those profits guaranteed them if you like to the share-holders but what he guaranteed are the profits. He has guaranteed that the people who put up the capital shall have a return on the capital, and if the profits unaided give that return, the person who gives the guarantee gets them to make good his guarantee. It seems to me the very simplest case of the application of profits, after they have become profits, by way of distribution of them to make good to somebody who has taken the risk of those profits not reaching that amount. That is the simple way in which I look at this case." See also re. The South Llanharrau Colliery Co. (*Exparte Jagon*).

Explanation to section 10 (2) (iii).—The explanation was added in 1922.

No rule has been made under the "explanation" to this clause defining what Mutual Benefit Societies are to have the benefit of the "explanation." It has been found that the "explanation," if applied, is likely to give more trouble to the societies than the present procedure. Executive instructions have however been issued that in the case of such societies (which appear to be peculiar to the Madras Presidency) where the taxable income is Rs. 5,000 or under and where the "shareholders" or "subscribers" reside within the limits of the circle of one Income-tax Officer, the company or society should not be assessed direct to income tax but the principal officer should furnish the Income-tax Officer with a list of the amounts paid out to subscribers showing the original subscriptions or capital invested and the interest thereon and the Income-tax Officer should ascertain what particular recipients of these payments are liable to tax and should add the amount of interest that they have

received to the income on which they would otherwise have been assessed, that is, he should assess the recipients direct.¹

10 (2) (iv) : Allowances in respect of insurance premia.—The allowances under this clause are restricted to insurance policies taken out against the risk of damage or destruction of buildings, machinery, plant, furniture stocks or stores, used for the purposes of the particular business of which the profits or gains are being calculated and no allowance can be made on account of premia in regard to other insurances. Further, any sums not actually expended on premia but merely set aside by a company or firm as an insurance fund are simply a particular description of reserve and no allowance or deduction can be given in respect of such reserves.

The Act does not contemplate the deduction of premia on account of insurance against a loss of profit. If, however, the owner of a business elects to claim any such allowance, he should signify his intention to the Income-tax Officer—and if he makes a declaration in writing, undertaking generally to pay the tax on any amounts recovered from an Insurance Company under any such policy or policies, the allowance will be granted in respect of the premia for any such policies that he may have taken out not more than a month before the date of such declaration or that he may take out subsequent thereto. Where no allowance is asked or allowed in respect of such policy, any sums received from the Insurance Company on account of the policy will not be liable to tax.²

Plant.—Plant is a set of machinery, tools, etc., necessary to conduct a mechanical business often including the buildings and grounds, or in the case of a rail road, the rolling dock, but not including material or produce; hence the permanent appliances needed for any institution (Standard Dictionary). Machinery implies the application of mechanical

¹ I. T. M., page 209, para 57 (ii).

² I. T. Manual, para 58, page 201.

means to the attainment of some particular end by the help of natural forces.¹

The following have been held to be 'plant' for the purposes of trade, a bulk used for coaling ships,² Railway Locomotive carriages, wagons and tools,³ and tramways, rails.⁴ A stallion which serves mares for payments is not a plant, and the fall in value due to old age cannot be described as loss due to wear and tear of plant.⁵ The books of a lawyer are not plant. "It is impossible to define what is meant by 'plant and machinery.' It conjures up before the mind something clear in the outline, at any rate, it means apparatus, alive or dead, stationary or moveable, to achieve the operations which a person wants to achieve in his vocation. But the books which he consults on his shelves, and which he does not use as "implements" really, in the direct sense of the word, at all, I cannot believe are included in it, in spite of the reference to Coke upon Littleton. The extension of the allowance to professions, employments, vocations, or offices, that is to say, to all the schedules and all parts of them, I do not think involves an extension of the ordinary commonsense meaning of the word 'plant,' because, as the Solicitor-General pointed out, and as occurred to me in the course of the argument, undoubtedly there are many professions and vocations where machinery and plant is used, but still machinery and plant of the sort that was understood before. I do not think there

¹ Corporation of Calcutta v. Cossipur Municipality, 49 Cal. 190 P. C.

² John Halt Junn & Co. v. Rickman, 1 K. B. 311.

³ Caledonian Railway Co. v. Banks, 1 T. C. 487.

⁴ London County Council v. Edwards, 5 T. C. 383.

⁵ Derby, Earl v. Aylmer, 3 K. B. 374.

is any colour for saying that by reason of that extension you can extend the meaning of the word 'plant' beyond what, I am sure, ninety-nine people out of a hundred would agree were its limit before, that is to say, limits which excluded from the category the books which a man consults for the purpose of information.¹

Furniture.—The word "furniture" was added in 1922.

Depreciation allowance.—Rule 8: An allowance under section 10 (2) (vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statement:—

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Class of buildings, machinery, plant or furniture.	Rate	Remarks.
1. Buildings*—	Percent- age on prime cost.	
(1) First class substantial buildings of selected materials.	2½	* Double these rates may be allowed for buildings used in industries which cause special deterioration, such as chemical works, soap and candle works, paper mills, and tanneries.
(2) Buildings of less substantial construction.	5	
(3) Purely temporary erections such as wooden structures.	10	

¹ Daphne v. Shaw, 11 T. C. 256.

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
2. Machinery, Plant or Furniture†— General rate.	5	† The special rates for electrical machinery given below may be adopted, at firm's option for that portion of their machinery.
Rates sanctioned for special industries—		
Flour Mills, Rice Mills, Bone Mills, Sugar Works, Distilleries, Ice Factories, Aerating Gas Factories, Match Factories.	6½	
Paper Mills, Ship Building and Engineering Works, Iron and Brass Foundries, Aluminium Factories, Electrical Engineering Works, Motor Car Repairing Works, Galvanizing Works, Patent Stone Works, Oil Extraction Factories, Chemical Works, Soap and Candle Works, Lime Works, Saw Mills, Dyeing and Bleaching Works, Furniture and Plant in hotels and boarding houses, Cement Works using rotary kilns, plant and machinery used for the manufacture of wire and wirenails.	7½	
Sewing and Knitting machines employed in hosiery factories. Comptometers, Typewriters plant used in connection with brick manufacture, tile-making machinery, plant and machinery used in the manufacture of vegetable ghee, optical machinery, glass factories, Telephone Companies,	10	

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
Mines and Quarries. Tubewell boring plant, concrete pile driving machines plant or machinery used in the manu- facture of coke, machinery used in the manufacture of concrete pipes.	Percent- age on prime cost.	
Sewing machines for canvas or leather	12½	
Motor cars used solely for the purpose of business.	15	
Indigenous sugarcane crushers (<i>Kohlus</i> or <i>Belans</i>).	15	
Moulds used in the manufacture of con- crete pipes.	16	
Motor taxis, motor lorries and motor buses.	20	
Ropeway ropes and trestle sheaves and connected parts.	25	
Ropeway structures—		
(1) Trestle and station steel work ...	5	
(2) Driving and tension gearing ...	7½	
(3) Carriers	10	
Salt Works—		
(1) Machinery, plant, locomotives, wagons and rolling stock.	10	

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percent- age on prime cost.	
(2) Tugs, barges, motor launches and floating plant.	7½	
(3) General plant and machinery used in engineering shops.	7½	
(4) Reservoirs, condensers, salt pans, delivery channels and piers, if constructed of masonry, con- crete, cement, asphalt or similar materials.	5	
NOTE —Repairs to earth works of the same kind will be allowed as revenue expenditure.		
(5) Piers, quays and jetties construct- ed entirely or mainly of steel.	5	
(6) Piers, quays and jetties construct- ed entirely or mainly of wood.	10	
(7) Pipe lines for conveying brine if constructed of masonry, con- crete, cement, asphalt or similar materials.	10	
3. Electrical Machinery—		
(a) Batteries	15	
(b) Other electrical machinery, includ- ing electrical generators, motors (other than tramway motors), switchgear and instruments transformers and other stationery plant and wiring and fittings of	7½	

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percent- age on prime cost.	
electric light and fan installa- tions.		
(c) Underground cables and wires ...	6	
(d) Overhead cables and wires ...	2½	
(e) X-Ray and Electro-therapeutic ap- paratus and accessories thereto.	20	
4. Hydro-Electric concerns—		
Hydraulic works, pipe lines, sluices, and all other items not other- wise provided for in this state- ment.	2½	
5. Electric Tramways—Permanent Way—		
(a) Not exceeding 50,000 car miles per mile of track per annum.	6½	
(b) Exceeding 50,000 and not exceed- ing 75,000 car miles per mile of track per annum.	7½	
(c) Exceeding 75,000 and not exceed- ing 1,25,000 car miles per mile of track per annum.	8½	
Cars—car tracks, car bodies, electrical equipment and motors.	7	
General plant, machinery and tools ...	5	

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
Percent- age on prime cost.		
6. Mineral Oil concerns—		
A. Refineries—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	10	
B. Field operations—		
(1) Boilers	10	
(2) Prime movers	5	
(3) Process plant	7½	
Except for the following items—		
(1) Below ground—All to be charged to revenue.		
(2) Above ground—		
(a) Portable boilers, drilling tools, wellhead tank, rigs, etc.	25	
(b) Storage tanks	10	
(c) Pipe lines—		
(i) Fixed boilers	10	
(ii) Prime movers	7½	
(iii) Pipe line	10	

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percent- age on prime cost.	
7. Ships—		
(1) Ocean—		
(a) Steam	5	
(b) Sail or tug	4	
(2) Inland—		
(a) Steamers (over 120 ft. in length)	5	
(b) Steamers including cargo launches (120 ft. in length and under).	6	
(c) Tug boats	7½	
(d) Iron or steel flats for cargo, etc.	5	
(e) Wooden cargo boats up to 50 tons capacity.	10	
(f) Wooden cargo boats over 50 tons capacity.	7½	
(g) Motor launches	10	
(h) Speed boats*	15	* "Speed Boats" means a motor-driven boat with a high speed internal combustion engine capable of propelling the boat at a speed exceeding 15 miles per hour in

Class of buildings, machinery, plant or furniture.	Rate.	Remarks.
	Percent- age on prime cost.	still water and so designed that when running at speed it will plane— <i>i.e.</i> , its bow will rise from the water.
8. Mines and Quarries—		
(1) Railway siding† (excluding rails)	5	† Depreciation on rails used for tram- ways and sidings, and in inclines where the rails are the property of the assessee, is allowed at 10 per cent. under item 2 above (plant used in con- nection with Mines and Quarries) in addition to any depreciation allow- ance on the cost of constructing the tramways sidings or inclines.
(2) Shafts	5	
(3) Inclines†	5	
(4) Tramways on the surface† (exclud- ing rails).	10	
9. Aeroplanes—		
(1) Aircraft	25	
(2) Aero-engines	33½	
(3) Aerial photographic apparatus ...	20	

Rule 8-A—Allowances under section 10 (2) (ii) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be in accordance with the rates prescribed in the statement attached to rule 8; and in respect of apparatus, appliances or other capital assets not covered by that statement, the allowance shall be at the rate of 5 per cent. per annum on the prime cost.¹

Rule 9.—For the purpose of obtaining an allowance for depreciation under proviso (a) to section 10 (2) (vi) of the Act, the assessee shall furnish particulars to the Income-tax Officer in the following form :—

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Description of buildings, machinery, plant or furniture.	Original cost.	Capital expenditure during the year for additions, alterations, improvements and extensions.	Date from which used for the purposes of the business.	Particulars (including original cost, depreciation allowed and value realised by sale or scrap value) of obsolete machinery, plant or furniture sold or discarded during the year, with dates on which first brought into use and sold or discarded.	Remarks.
1	1-A	2	3	4	5

I, _____, declare that to the best of my information and belief that the buildings, machinery, plant and furniture

¹ I. T. Manual, Rule 8 A.

described in column 1 of the above statement were the property of _____ during the year ended _____ and that particulars entered in the statement are correct and complete.

Place	Signature
Date	Designation

The allowances permissible under this clause are prescribed in rule 8 and the information that must be furnished in order to obtain an allowance is set out in rule 9. It is only the particular classes of buildings, machinery, plant or furniture mentioned in rule 8 in respect of which the depreciation allowance can be claimed, and the buildings, machinery, plant or furniture for which depreciation allowance is claimed must be used for the purposes of the particular business of which the profits or gains are being computed. No allowance can be claimed on account of depreciation, for example, of any portion of a building which is used as a residence by the assessee. Further, the buildings, etc., must be the property of the assessee. No allowance can be claimed if they are leased from others.

Buildings belonging to the owner of a business and used by him in order to house his employees are buildings used for the purpose of business if the owner charges no rent. If, however, rent is charged, section 9 would apply.

When a person succeeds to a business, the depreciation allowance due to him in respect of buildings, machinery, etc., taken over by him from his predecessor should be worked out on the basis of original cost to the successor (not on the cost to the predecessor). The same will apply where the person is not a successor but merely a purchaser.¹

Depreciation should be allowed on the cost of setting up machinery and plant, that is, the expression "original cost" in section 10 (2) (vi) should be held to include the cost of freight, pay of engineer and staff

¹ *Siraspur Mills Co., Ltd., Ahmedabad versus Commissioner of Income tax, Bombay—Civil Reference No. 3 of 1931, High Court of Bombay.*

who erect the machinery, put it in working order, and carry out experiments to test it. The rates of depreciation allowance fixed in rule 8 are fixed rates for the whole of India. Depreciation at those rates must be allowed each year when there are sufficient profits, and only the excess of the depreciation allowance over profits can be carried forward from year to year until absorbed, and this practice must be followed whether the depreciation allowance is adjusted in the accounts of the assessee or not and irrespective of the amount shown in the accounts. It is for this reason that in the form of returns of income prescribed in rules 18 and 19 any amounts entered in the accounts of an assessee for the depreciation of any of the assets of the business must be written back as the amount allowed for income-tax purposes is the amount prescribed in the rules and not the amount entered in the books of the assessee.

Where an assessee owns more business than one, any part of the depreciation allowance in respect of one business, that cannot be set off against the profits of the same business, owing to the profits in question being insufficient, shall be set off, if possible, against the profits for the same year of any other business or businesses owned by the assessee. Any amount of depreciation that cannot be set off against the assessee's business profits for the same year, whether he owns one business or more, shall be set off under section 24 against his income, profits or gains chargeable with income-tax under any other head in that year. Any part of the depreciation allowance due to an assessee that cannot be set off against his income, profits or gains under all heads for the year in question, shall be carried forward to the next year under proviso (b) to sub-section (2) (vi) of section 10 of the Act. The assessee should not be allowed the option of either setting off unabsorbed depreciation allowance against the profits of any other business or against other heads of income, profits or gains on the one hand or carrying it forward on the other.¹

Where an assessee succeeds another in business, the words "original cost" thereof refer to original cost to the person actually assessed and not to original owner.² The

¹ I. T. Manual, para 59, pages 201—203.

² A. I. R. 1932 Bom. 216.

expression is limited in its scope to genuine costs to the assessee and not one paid by his predecessor.¹

Where an assessee acquired property by bequest, the original cost of the property to him is the real value of the property at the time when he got it, minus expenses for completing his title.²

Section 10 (2) (vi) provides for the depreciation of furniture, but it may not suit the convenience of particular traders to ask that a depreciation account should be kept up for petty items of furniture and a depreciation allowance on account of furniture should, therefore, be granted only in cases in which it is asked for, in which event the cost of replacement should not be allowed; where such depreciation allowance is not asked for, the cost of replacement should be allowed in the year in which the furniture is replaced.

Whatever depreciation allowances are granted, it will be necessary to maintain an account showing the original cost to the assessee of the plant, the amount of the annual allowance, the amount of the allowances already granted and the balance still to be allowed.

The percentage allowance fixed in the rule for the permanent way of electric tramways only covers cases where the number of car miles per mile of track does not exceed 125,000 car miles per annum. Where the number of car miles per mile of track per annum exceeds 125,000 special terms will have to be made in each case. Similarly special consideration should be given to each case where there are special circumstances such as exceptional gradients, the compulsory use of wood paving, etc., tending to show that the car mileage does not fairly represent the wear and tear of the track. The cost of renewing concrete foundations should be allowed as a trading expense as and when incurred, provided that, if the renewed foundations are an improvement on the old ones, so much of the cost of the renewed foundations as represents such

¹ A. I. R. 1933 Pat. 28; *The Commissioner of Income-tax, Madras v. Massey & Co. Ltd.* 3 I. T. C. 302.

² A. I. R. 1933 Rang. 348 S. B.

improvement should not be admitted as a trading expense. Amounts received for the old materials, whenever renewals are effected, should be credited against the cost of the renewals, and if the old materials are not disposed of at the time or are used for other purposes, their estimated value should be deducted, subject to adjustment if necessary, as and when the old materials are disposed of. The percentages fixed for the depreciation of the permanent way are based upon the estimated life of a track from a consideration of the number of car miles per mile of track, and consequently these percentages may vary in connection with the same undertaking. It must be clearly understood that the revision of the life of a track need not necessarily be deferred till the whole track is renewed, because it may become clear before that date that revision is necessary either in the direction of increasing or decreasing the average life. As regards the rate for general plant, machinery and tools all other plant and machinery including workshop tools but excluding loose implements, office furniture and small articles which require frequent renewals (expenditure on which is allowed as a business expense against revenue), should be lumped together and the rate of 5 per cent. depreciation should be allowed thereon in addition to the cost of repairs. No depreciation should be allowed on overhead equipment, *i.e.*, trolley wires and connections: all expenditure on maintenance and renewals should be charged as working expenses as and when incurred.

The item "Below ground—All to be charged to revenue" in exception (1) under item 6 (Mineral Oil Companies)—B. (Field operations), in Rule 8 means that on the plant in question (pipes, *etc.*) below ground, depreciation is to be allowed at 100 per cent. so that if the profits are insufficient in any year to allow of the full 100 per cent, being written off against them, the balance can be carried forward, under proviso (b) to section 10 (2) (vi) of the Act to subsequent years.

No depreciation allowances are granted to railways on account of depreciation of their rolling stock as renewal charges are allowed as a business deduction.

An assessee deriving income from a railway or tramway (other than an electric tramway) business may at his option require that in computing the profits or gains of such business the following allowance shall be made

in lieu of the allowances specified in clauses (v), (vi) and (vii) of sub-section (2) of section 10 of the Act, namely :

The actual expenditure incurred by the assessee during the previous year on repairs, replacements, and renewals of plant, machinery, buildings and furniture which are the property of the assessee.

If he, however, has exercised the option referred to above in any year, he shall not be entitled to withdraw that option in any subsequent year without the consent of the Commissioner of Income-tax.

As stated in paragraph 53, no allowance can be made on account of the depreciation of the assets of a business other than the particular items mentioned in this sub-clause and in rule 8. No depreciation allowance, for example, is permissible to provide for the amortisation of capital sums paid on account of the purchase of the lease of a mine or for the depreciation of wasting assets such as coal. Depreciation allowances should, however, be allowed for sinking shafts, tramways and sidings in coal mines, which are included in the term "plant".

Where a business of such a nature that the profits derived from it were not previously liable to tax owing to a special exemption conferred either by statute or by notification, or rule having the force of law (examples are Shipping Companies and Indigo Companies), is taxed for the first time, the assessee is not entitled to claim in the first year of taxation, under proviso (b) to section 10 (2) (vi), accumulated depreciation allowances for all the years during which the profits of the business were not liable to tax. But in such cases depreciation must be allowed year by year for the full period of 20 years (or whatever it may be).

Shares and securities held as part of the capital of a business should be similarly dealt with. So long as shares or securities continue to be held by a company, firm or individual as part of his or its capital, any depreciation or appreciation in their market value is outside the scope of the Income-tax Act; and similarly, when the value of shares and securities so held (for example, the securities constituting the reserve fund of a bank or other company) is realised, the transaction is a capital transaction and no account should be taken for income-tax purposes of any profit or

loss resulting from the sale. On the other hand, where an individual company or firm habitually uses part of his or its resources in the purchase of securities or shares with a view to obtaining profit on their sale and the subsequent re-investment of the proceeds, the individual, company or firm is, in altering his or its investments, carrying on a trade for the sake of obtaining profit therefrom, and the profits secured or losses incurred are trade profits or losses which must be taken into account in determining the assessment to income-tax. It will, therefore, always be a question of fact to be decided on the merits of each case whether the changes in investment are of sufficiently systematic a character to constitute the exercise of a trade, but if they are, the profits therefrom are liable to assessment, and an allowance must be made for any losses in calculating the amount of tax payable.¹

An I. T. O. within whose jurisdiction any income, profits or gains accrued to a person, is competent to issue a notice under section 22 (2) pending the determination by the Commissioner, under section 64 (3), of the question of jurisdiction, where the assessee has his business in more places than one. Such notice is valid having regard to section 64 (4), and an officer who has territorial jurisdiction and assesses the tax payable by the assessee need not issue a fresh notice as a preliminary to assessment.

Where the assessee has presented their claim for allowance in respect of depreciation on the prescribed form, giving particulars of the original cost, the I. T. O. should not refuse the allowance merely because he considers them to be mere "guesses" unsupported by evidence. But he should adopt such means as he considers satisfactory for ascertaining the original cost.²

¹ I. T. Manual, para 59, pages 203—205.

² Bisheshwar Prasad Parsotamdas v. Commissioner of Income-tax U. P.; I. T. L. J. 1935 page 39.

English Law.—The scope of English law is absolutely identical with the provisions of this sub-clause.¹

Harbour—dredging out silt.—A harbour Board charged by statute with the duty of maintaining a harbour, which included part of a river bed deepened to give access to ships, claimed an allowance for wear and tear of plant on the ground that the silting up of the harbour constituted wear and tear of the plant of their concern. It was held that the harbour was not plant nor was silting wear and tear.²

Used for the purposes of business.—The expression means used for the purpose of business in the accounting year. Hence no allowance for depreciation is admissible in respect of buildings, machinery, plant, etc., which remained idle during the accounting year. The view taken by the learned Commissioner is that the words “used for the purposes of the business” mean that buildings, machinery, etc., must have been used for the purposes of the business in the accounting year. He points out that this follows from the cardinal principle underlying the whole of this Act. The tax is imposed on the profits or gains of the previous year and it follows naturally and logically that any deduction claimed must also be on account of that same period of time. In section 10, which deals with this matter, there is no distinct reference to the period, but where an allowance has to be made which covers a longer period, or which may only be ascertained in a later year, a definite proviso is inserted to meet the case. The machinery in question regarding which a deduction was claimed was not used for the purposes

¹ Commissioner of Income-tax, Madras v. Masey & Co., Ltd., A. I. R. 1929, Mad. 453 F. B.

² Dumbarton Harbour Board v. Cox, 7 T. C. 147.

of the business during the year in question. Counsel contends that though not used the machinery depreciated from lying idle. Whether it did so or not, it appears to us that the allowance is granted not for depreciation as such but for depreciation as consequence of the earning of income or while employed in the earning of income. Once it is conceded that the machinery in question lay idle, there is no question of such earnings. The answer, therefore, to the first question is that the words 'used for the purposes of the business' mean used for such purposes during the accounting year.¹

Lessor entitled to depreciation.—It has been held that where an assessee leased out jute press on rent he is entitled to depreciation allowance in respect of the buildings, plant and machinery leased. The facts of the case were that the assessee had purchased the Sulkea Jute Press in 1907 and worked it till 1930. In 1931 he leased it out to a company in which he held a 60 per cent share for a term of one year. The assessee was assessed under section 12 under the head "other sources." He claimed to be assessed under section 10 and to be entitled to an allowance for depreciation under sub-section (2) of that section. The Commissioner negatived the contention and held that depreciation is allowable only when the machinery and plant in question are the property of the assessee, and are used for the purpose of the business the income of which is being taxed. It was held that when a lessor leased out property of the business which was used for the business by the lessee, the lessor being responsible for the depreciation, he was doing the business

¹ N. D. Radha Kishen & Sons v. The Commissioner of Income-tax, Punjab and N. W. Frontier Province.

of letting out the machinery, etc., and was entitled to depreciation under section 10 (2).¹

Depreciation of Securities—No allowance is to be allowed for depreciation in the value of securities by comparison of market rates.²

More than one business.—Where the assessee owns a number of businesses and profits and gains of one business are not enough to cover the full depreciation allowable under this sub-section, the excess depreciation can be set off against the profits and gains of other business of the assessee.³

House-Property—Depreciation—Where the letting out of property upon lease for salami and for rent, the forfeiting of leases where possible and exaction of fresh salami and increased rent are all acts done in the carrying on or carrying out of a business in a house property, the sum is earned as part of the profits of the business, and is assessable accordingly to tax, but the assessee will be entitled to the allowance in respect of depreciation on buildings, machinery, plant or furniture prescribed by Cl. (vi) sub-sec. 2, sec. 10.⁴

Goodwill—Depreciation of.—Goodwill of a business though a valuable asset of a business is not plant or machinery

¹ *Sadhocharan Roy Choudhry v. Commissioner of Income-tax, Bengal*, I. T. L. J. 1935, page 200 following A. I. R. 1925 Mad. 12, Tax Cases 63, and distinguishing 55 Cal. 1057 and I. T. C. 50.

² *Tata Industrial Bank Ltd.*, 1 I. T. C. 152.

³ *The Commissioner of Income-tax, Madras v. A. Suppan Chettiar & Co.*, 2 I. T. C. 251; 50 Mad. 529; 6 T. C. 399; *The Commissioner of Income-tax Nagpur v. The Ballanpur Collieries, Chanda*, 4 I. T. C. 255.

⁴ *Commissioner of Income-tax v. Melbourne Trust Ltd.*, (1914) A.C. 1001; *in re Spanish Prospecting Co.* (1911) 1 Ch. 92 and *Assets Co. Ltd. v. Forbes* (1897); 3 T. C. 5+2 Rel. on. *Gooptu Estate Ltd.*, *in re A. I. R.* 1930 Cal. 1; 4 I. T. C. 146.

used in business and no allowance can be made for depreciation in its value due to war.¹

Depreciation in assessing shipping companies.—The following instructions should be followed in regard to the treatment of depreciation in assessing shipping companies the whole of whose profits or gains neither accrue nor arise nor are received in India :—

(a) If a company furnishes annual accounts for the whole of its business, Indian and foreign, the second method provided by Rule 33 should be applied. Depreciation has only to be considered in calculating the world-profits. These are to be calculated according to the Indian Income-tax Act. Profits calculated according to the United Kingdom Act will, therefore, require certain adjustments. Deductions permitted in the United Kingdom but not permitted in India will have to be added back and deductions permissible in India but not permissible in the United Kingdom will have to be allowed. If any company however prefers to claim the depreciation allowed by the United Kingdom Income-tax authorities, the Commissioners of Income tax may adopt that figure. Otherwise depreciation will have to be calculated according to the Indian rules. What follows applies to the calculation of depreciation according to the Indian rules. For this purpose, a complete depreciation record has to be maintained for the entire fleet. Depreciation begins to run from the first year in which the company is "assessed" in India, that is, the first year in which its profits (or loss) were determined for the purpose of deciding whether it was liable to Indian Income-tax. Unabsorbed depreciation, *i.e.*, any balance of depreciation which cannot be allowed in any year owing to the profits not sufficing to cover the full amount permissible under the Indian rules will be carried forward and allowed as far as possible in calculating the world-profits according to the Indian method in the following year and if necessary in subsequent years.

(b) The proportion Indian receipts/Total receipts is applied to the world-profits calculated according to the Indian method (if there are any such profits) and the result is the Indian income liable to tax. No further deduction is permissible from the amount thus arrived at on account of

¹ A. Lloyd & Sons Ltd. v. Commissioner of Inland Revenue, 9 A. T. C. 144.

depreciation (unabsorbed or otherwise) or anything else. The due proportion of all allowances permissible is automatically set off against the Indian profits by the above method.

(c) This method is equally applicable whether a company works out the profits for each voyage or follows any other method of accounting provided that it prepares complete annual accounts for the whole business, Indian and foreign, and furnishes the accounts of gross receipts, Indian and foreign.

(d) Some lines do not furnish complete annual accounts for their world business. They keep separate complete annual accounts for their Indian trade—that is, for all “round voyages” to and from Indian ports. The proper course is then to apply the method just described treating the profits of the Indian trade and the gross receipts of the Indian trade as though they were the “world-profits” and the “world-receipts” respectively. In fact the business other than the Indian trade is ignored.

A difficulty sometimes arises in such cases owing to the fact that the ships employed in the Indian trade are constantly being changed. Unless United Kingdom depreciation is accepted as indicated above a depreciation record will have to be kept for every ship employed at any time in the Indian trade. Depreciation must be allowed on each ship employed in the Indian trade in a given year and the allowance must be a proportion of the annual rate calculated with reference to the number of days spent in the Indian trade whether at sea or in harbour. Any unabsorbed depreciation in any year must be distributed among the ships in the Indian trade in that year in proportion to the capital cost of each, and the unabsorbed depreciation thus allotted to any ship can only be allowed in any subsequent year against the same ship.

The allowance should cease :—

- (a) on ships included in the fleet in the first year in which the Company becomes liable to assessment in India (irrespective of whether it was actually found to have a taxable income in that year or not), after the twentieth year beginning with that year ;
- (b) on ships subsequently added to the Company's fleet, after they have been borne on the fleet for 20 years.

In both cases the period may be extended proportionately, where the United Kingdom depreciation is allowed in calculating the "profits of the Indian trade" which take the place as already explained of the "world profits".

Obsolescence cannot be allowed in these cases.¹

Obsolescence allowances.—It must be particularly noted that the allowances under this clause can only be given where the machinery or plant becomes obsolete. Where machinery or plant is sold for reasons other than that it has become obsolete, no allowance can be given. Where a machine is sold no allowance can be given if the facts present evidence that the machine is not obsolete.

The amount allowed for obsolescence is, again, calculated upon the original cost to the owner. The amount to be given is the amount of such original cost to the owner as reduced by the depreciation allowances under clause (vi) and the amount for which the machine is actually sold or its scrap value. For example, a machine costing Rs. 10,000 on which a depreciation allowance of 10 per cent. of the original cost is admissible is sold after 5 years for Rs. 2,000. The original owner gets Rs. 5,000 for depreciation and nothing for obsolescence as the machine is not scrapped or sold on account of obsolescence. The second owner gets also an allowance at the rate of 10 per cent. and as the cost of the machine to him was Rs. 2,000 his annual allowance is Rs. 200. If owing to its becoming out of date the machine is scrapped useless after three years then in the year in which it is so scrapped the second owner can claim Rs. 1,400, for obsolescence. No allowance for obsolescence is obviously permissible if the machine lasts 10 years or more with any one owner. This will apply also where the "second owner" is not merely a purchaser but a "successor" to the business of his predecessor to which the machine originally belonged.²

Obsolete machinery means machinery which though it is able to perform its function has yet become out of date and performs its function so indifferently or at such a cost that a prudent man, instead of continuing to use such machinery, would discard it and instal a more modern and more labour

¹ I. T. Manual, para 112.

² I. T. Manual, para 60, pages 205-206.

saving machine.¹ The word obsolete includes cases of unfitness arising from supersession by new invention.² Even if the machinery breaks down after being declared obsolete and is sold after such breakdown, the fact that the machinery broke down also will not affect its having become obsolete and deduction will be allowed under this subsection.³

But where the machine does not become unfit for use on account of its having become obsolete but for some other reason, no allowance would be admissible under this subsection. Thus where a new motor car met with an accident and became unfit for use and was sold as scrap iron the owner was held not entitled to an allowance.⁴ Also where a certain oil mill was closed on the ground that the machinery being old and worn out, could not work at a profit, it was held that no allowance was admissible under this subsection.⁵

An assessee who carried on various businesses two of which consisted of rice mills, sold those mills and claimed as a deduction the difference between the purchase price of the machinery of those mills and the sale price, giving credit for the amounts allowed to him in previous years for depreciation but it was found as a fact that the machinery was not sold because it had become obsolete, it was held that no obsolescence allowance was allowable.⁶

¹ *Ratan Singh v. Commissioner of Income-tax, Madras*, A. I. R. 1926 Mad. 462.

² *In re Ratna Singh*, A. I. R. 1925 Mad. 462.

³ *In re Swadeshi Cotton Mills Ltd.*, Cawnpore, A. I. R. 1929 All. 70.

⁴ *Ratan Singh v. Commissioner of Income-tax, Madras*, A. I. R. 1926 Mad. 462.

⁵ *In re Shewdayal Jagannath*, 35 C. W. N. 214.

⁶ *Secretary Board of Revenue, Madras v. S. R. M. A. R. Ramana-dhan Chettiar*, 1 I. T. C. 244.

The question whether a certain machinery has become obsolete or not is a question of fact, and the decision of the Commissioner on this point would be final. The assesseees were the owners of eight steamers which were all used for bringing coal from Newcastle to London. These steamers were purchased during the war when only standard pattern vessels were available. At some time before 1924 the assesseees decided gradually to sell these vessels and to replace them by vessels of a better type. The first of these vessels was delivered to them in April 1924, and one of the old ones sold in September of the same year. The new vessel was shown to be superior to the old vessel but it was admitted that in the ordinary course the old vessel might have many years of useful life before her. The special Commissioners held that the old vessel had not become obsolete. It was held that this was a finding of fact which could not be interfered with by the High Court.¹

Obsolescence allowance—when allowable.—An allowance under this subsection can be claimed only in respect of machinery and plant actually discarded as obsolete during the year under assessment and not in any other year.²

10 (2) (viii).—The subsection was added by Income-tax Amendment Act III of 1928.

Allowance on account of dead or useless animals.—The allowance in respect of live stock that has died or become permanently useless to the assessee should be granted whether the live stock is replaced or not.³

¹ The South Metropolitan Gas Company v. Dadd, 13 T.C. 205.

² N. D. Radha Kishen & Sons v. The Commissioner of Income-tax, Punjab and N. W. F. Provinces, 3 I. T. C. 73.

³ I. T. Manual, para 61, page 206.

Allowance on account of rates or taxes.—The allowance under this clause covers only the land revenue and local rates or municipal taxes paid in respect of the portion of the premises used for the purposes of the business. In assessing income from business a local rate or tax which is payable irrespective of whether profits are made or not should be treated as expenditure incurred solely for the purpose of earning profits or gains within the meaning of section 10 (2) (ix) if the rate or tax is not an admissible deduction under section 10 (2) (viii). No allowance can be given on account of any other rates or taxes whatsoever. All rates and taxes therefore, whether levied on the profits of a business or which are charged on the proprietor of a business in respect of anything other than the actual portion of the premises used for the purposes of the business, must be disallowed. (See also paragraph 69 and Patna High Court Case No. 102 of 1920, in the matter of Raja Jyoti Prasad Singh Deo of Kashipur I, Srinivasan's Tax Cases, page 103).¹

Deductions on account of taxes paid.—No deduction is permissible in computing the income, profits or gains on account of any taxes or rates paid in respect of such income, profits or gains except that a local rate or tax which is payable irrespective of whether profits are made or not (see paragraph 63) is to be allowed as deduction from income from business. Section 10 (2) (viii) of the Act allows as a deduction from business profits sums paid on account of land revenue, local rates or municipal taxes in respect of premises used for the purposes of a business. This specific provision has been inserted because the local rates paid on account of such premises are usually in the nature of a payment for services rendered (e.g., by supply of water, conservancy arrangements, etc.) but that allowance is closely restricted to a local tax or rate levied in respect of the premises used for the purpose of the business. No deduction is allowed for any other local rate or tax such as, for example, local taxes varying according to the income or profits of a business. Nor is any deduction on account of a local rate or tax on property allowed from the annual value of property which is taxable under section 9. Similarly no allowance is permissible on account of income-tax or super-tax paid by an assessee. Where property, profits

¹ I. T. Manual, para 62, page 206.

or gains are liable to taxation in other countries or by other authorities in British India all these authorities are taxing the same property or profits for different purposes. In the Patna High Court, Case No. 102 of 1920 in the matter of Raja Jyoti Prasad Singh Deo of Kashipur¹ it was held that the amounts paid for cases by a person deriving an income from rent of collieries and from royalties on the amount of coal raised from the collieries are not to be deducted in computing the amount of his assessable income, and it was clearly stated that "the payment of a tax which is conditional on the making of an income and which has to be calculated on the amount of such income after it has come into existence cannot be said to be expenditure for the making of such income.

Again in the Madras High Court, Case No. 11 of 1920, Chief Commissioner of Income-tax, Madras versus The Eastern Extension Australasia and China Telegraph Co., Ltd.,² it was held that in computing the profits of a non-resident company under the provisions of rule 33, the taxes payable in other countries in respect of the profits of the company are not to be deducted.³

10 (2) (viii a).—This subsection was added by Income-tax Amendment Act XXIII of 1930.

Business—Allowance on account of bonus paid to employees.—The allowance under this clause covers any sum paid as bonus or commission to an employee for service rendered if such sum would not have been payable to him as profits or dividends if it had not been paid as bonus or commission, provided that the amount is reasonable with reference to his pay and conditions of service, the profits of the business for the year in question and the general practice in similar businesses.⁴

10 (2) (ix) —The proviso was inserted by the Income-tax Amendment Act III of 1928. The object of the proviso

¹ I, Srinivasan's Tax Cases, page 103.

² I, Srinivasan's Tax Cases, page 120.

³ I. T. Manual, para 69, page 211.

⁴ I. T. Manual, para 63, page 206.

was given as follows in the statement of objects and reasons in Act III of 1928.

"The Calcutta High Court have held that road cess levied on coal mines is an admissible deduction from the assessable profits of the mine. The cess though nominally levied on immoveable property is actually calculated with reference to the annual profits of the mines. It is therefore a tax on profits and generally speaking anything that is of the nature of a tax on profits is not allowed as a deduction in assessing income-tax. Moreover, the Central Government have always contended that provincial or local taxes on profits should not take precedence of Central taxes on the same profits and if this principle is sacrificed, serious loss to Central revenues may result. Clause 2 (b) of the Bill makes it clear that an assessee is not entitled to deduct, in computing income, any sums paid to a local authority in respect of any tax (cess, rate, etc.) assessed on the basis of profits even though it may be nominally imposed on immoveable property."

The decision in *Isabella Coal Company's Case*¹ is therefore no longer good law.

Solely for the purpose etc.—No expenses can be deducted in calculating profits or gains of a business except such as are "wholly and exclusively laid out for the purposes of trade, that is money wholly and exclusively laid out for the purposes of the trade."² What is money wholly and exclusively laid out for the purposes of trade is a question of fact, and must be determined in each case upon the peculiar

¹ 2 I. T. C. 87.

² *Robert Addie & Sons Collieries Ltd. v. Commissioners of Inland Revenue*, 8 T. C. 671.

circumstances of the case and the ordinary principles of trade. The question to be determined is whether the expenditure is a part of the assessee's working expense and is made for the purpose of earning the profits.¹ No deduction is permissible for expenditure incurred out of the profits after the same have been earned. An outlay to earn profits is clearly distinguished from the application of profits already earned. Thus the share of profits allowed to participating policy-holders is conditional on profits being earned and cannot be described as a payment made to earn profits. It assumes that profits have first come into existence. But profits on their coming into existence attract Income-tax Act at that very point, and the revenue is not concerned with the subsequent application of the profit.²

Thus in the case of purchase of property by an assessee, profits accrue to the assessee on the date when the sale becomes absolute, and expenditure incurred by him in obtaining mutation in his favour or in taking delivery of possession must be entirely ignored.³

Where under an agreement with the District Board a tramway company agreed to pay moiety of profits in excess of 4 per cent. on the capital invested for the time being, it was held that the payment of the moiety is neither rent nor payment of any local rate nor is it any expenditure incurred solely for the purpose of earning such profits or gains.⁴

¹ *Stron v. Woodsfield*, 5 T. C. 215 at 220.

² *Last v. London Assurance Corporation*, A. I. R. 1931 P. C. 165 ; *Bharat Insurance Co. Ltd. v. Income-tax Commissioner, Punjab*, A. I. R. 1934, 45 P. C.

³ *Commissioner of Taxes v. Melbourne Trust Ltd.*, 1914 A. C. 1001 ; *in re Raghunandan Prasad*, A. I. R. 1926 Pat. 475 F. B.

⁴ *The Howrah Amata Light Ry. Co. Ltd.*, A I R. 1928 Cal. 579 F.B.

Similarly, money paid to a competitor to induce him not to compete with the assessee, is not expenditure incurred solely for the purpose of earning such profits or gains.¹ Also where a bank made itself liable for paying a certain proportion of the sums which were invested with itself for the benefit of its employees, it was held that the payment was not expenditure for the purposes of earning profits or gains, but only a liability.²

Similarly, payments to be made in certain proportion out of the profits on capital borrowed for the purpose of business cannot be treated as expenditure incurred solely for the purpose of earning profits or gains.³ An assessee can claim deduction of expenditure only if the expenditure is actually incurred or liability incurred as satisfied before the close of the year of assessment.⁴

Capital Expenditure.—Outlay in the shape of capital expenditure is not allowed as trade expense.⁵ The question whether a particular expenditure in business is current as opposed to capital, must essentially be one of degree and therefore one of fact.⁶ No hard and fast rule can be laid down

¹ Commissioner of Income-tax v. Abagaman, A. I. R. 1928 Mad. 902; 55 M. L. J. 66 F. B.

² Commissioner of Income-tax v. Nedungadi Bank, A.I.R. 1926 Mad. 1048; 51 M. L. J. 403 F. B.

³ Commissioner of Income-tax v. Haji Jamal Mirmohammad & Co., A. I. R. 1925 Bom. 251; 49 Bom. 362.

⁴ Commissioner of Income-tax v. Jai Narain Motiram, A. I. R. 1929 Nag. 243.

⁵ English Crown Spetter Company v. Baker, 99 L. T. 358.

⁶ S. Ramnath Reddiar v. Commissioner of Income-tax, A. I. R. 1928 Rang. 162.

and in each case the question whether a particular expenditure is capital expenditure or not has to be judged on the facts and circumstances of the case by the standard set up by prudence and experience of merchants.¹ Broadly speaking it may be said that "capital expenditure is a thing that is going to be spent once and for all and income expenditure is a thing that is going to recur every year."² "The real test is between expenditure which is made to meet a continuous demand for expenditure as opposed to an expenditure which is made once for all."³ Broadly speaking, outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business or for a substantial replacement of equipment."⁴

The question as to what is capital or revenue expenditure in respect of tea gardens is one the answer to which depends on certain general principles. The English decision in the case of *Vallambrosa Rubber Co. versus Farmer* (5, English Tax Cases, 329) establishes certain principles which are applicable to their case. The first is that the cost of the upkeep (e.g., weeding and draining) of an area that is not in bearing may be charged to revenue. While expenditure on the maintenance of an area that has not reached maturity may be classified as revenue expenditure, any income derived from the sale of tea at this stage is on the same footing as income from the sale of tea at any other stage and should be taken into account in computing the taxable income of the concern. The second principle is that any expenditure that creates a potential source of recurring revenue at whatever stage in the development or working of the estate is capital

¹ *The Ros Bank Printing Co. Ltd. v. The Commissioner of Inland Revenue*, 13 T. C. 864 at 874.

² *Vallambrosa Rubber Company Ltd. v. Farmer*, 5 T. C. 529 at 636.

³ *Ounsworth v. Vickers*, 6 T. C. 671.

⁴ *Commissioner of Inland Revenue v. The Granite City Steamship Company, Ltd.*, 13 T. C. 1.

expenditure. The source of revenue in tea gardens is the tea bushes, and whenever a bush is planted, a potential source of revenue is created. It is the individual bush that must be considered and not an area planted with such bushes. In concession, however, to representations that in filling or supplying is in many cases necessary in order to keep a tea garden in a state of efficiency and that to regard expenditure on such operations as capital expenditure will mean hardship, a proviso has been added in Rule 24 to the effect that an allowance will be made on account of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has previously been abandoned. This concession is extended only to tea gardens in British India, since Rule 24 applies only to such gardens.¹

Expenses for weeding, etc., in Rubber Estate.—A rubber company had only 1/7th of its estate grown with rubber trees in full bearing, the remaining 6/7th being in process of cultivation for the production of rubber. It was contended for the company that the total expenditure on the estate was current expense, while for the Inland Revenue it was contended that 6/7th of the expense was capital expenditure. Lord Johnston in delivering judgment observed:—

“It appears to me that, as the present worked, the trade, manufacture, adventure or concern of the company is the cultivation and production for sale at profit of rubber and other tropical products. For this purpose land had to be acquired, cleared and drained, roads made, and buildings erected, before the cultivation began. What was expenditure for these purposes was I think capital expenditure, and not, in the sense of the Income-tax Act, money laid out and expended, for the purposes of the trade etc. But once the cultivation began with the planting, expenditure on cultivation,

¹ I. T. Manual, para 64 (xi). For Rule 24 see notes under 2 supra.

production, and marketing was I think revenue expenditure for the purposes of the trade, etc.¹

Price paid for unexecuted Contract.—Price paid for securing unexecuted contracts is capital expenditure, and therefore cannot be deducted in computing profits from such contracts.² Where the assessee paid £30,000 as the value of certain unexecuted contracts for the supply of coal to him and subsequently made large profits by the sale of the said coal, it was held that the sum of £ 30,000 was capital expenditure and the assessee was not entitled to any deduction on that account

Per Viscount Haldane :—

“profit may be produced in two ways. It may result from purchases on income account, the cost of which is debited to that account, and the prices realised therefrom are credited, or it may result from realisation at a profit, of assets forming part of the concern. In such a case a prudent man of business will no doubt debit to profit and loss the value of capital assets realised, and take credit only for the balance..... the appellant..... had brought as part of the capital of the business his father's contracts. These enabled him to purchase coal from the colliery owners at what we were told was a very advantageous price..... He was able to buy at this price because the right to do so was part of the assets of the business. Was it circulating capital ?

My Lords, it is not necessary to draw an exact line of demarcation between fixed and circulating capital. Since Adam Smith drew the distinction in the Second Book of his *Wealth of Nations* which appears in the chapter on the Division of Stock, a distinction which has since become classical, economists have never been able to define much more

¹ See *Watney & Company's Case*, L. R. 5 Esq. Div. 241; *Highland Railway Company Case*, 16 R. 950 and the *Granite Supply Association's Case*, 8 F. 55. *Vallambrosa Rubber Company Ltd. v. Farmer*, 5 T. C. 529.

² *City of Soudon Corporation v. Slytes*, 2 T. C. 239.

precisely what the line of demarcation is. Adam Smith described fixed capital as what the owner turns to profit by keeping it in his own possession, circulating capital as what he makes profit by parting with it and letting it change masters. The latter capital circulates in this sense.

My Lords, in the case before us the appellant, of course, made profit with circulating capital by buying coal under the contracts he had acquired from his father's estate at the stipulated price of fourteen shillings, and reselling it for more, but he was able to do this simply because he had acquired, among other assets of his business, including the goodwill, the contracts in question. It was not by selling these contracts, of limited duration though they were, it was not by parting with them to other masters, but by retaining them, that he was able to employ his circulating capital in buying under them. I am accordingly of opinion that, although they may have been of short duration, they were none the less part of his fixed capital. That he had paid a price for them makes no difference."¹

Damages for Cancellation of a Contract.—Money paid to secure the cancellation of a contract, which is not expected to be profitable to the assessee is capital expenditure.² A company contracted for the construction of a new ship, but subsequently owing to slump in shipping trade, it became known that the ship could not be worked at a profit, and secured the cancellation of the contract on payment of a large sum by way of damages, the payment was held to be capital expenditure.³

Repairs.—The word "repairs" ordinarily means "to make good defects including renewal where necessary." It will include patching where patching is practicable, but

¹ John Smith & Sons v. Moore, 12 T. C. 206.

² Giridhar Das Hariballav Das, 3 I. T. C. 83.

³ Countess Warwick Steamship Company Ltd. v. Ogg, 8 T. C.

would include putting a new piece if patching is not practicable.¹ Repairing, however, does not cover a total reconstruction. Whether repairs are really repairs or replacement of capital assets is a question of degree and of fact.²

A ship or machinery needs constant repair, and the cost of repair is an expense necessary for the purposes of earning profits of the trade. Repairs may be done as they are required or may be deferred to a more convenient date in which case the accumulated arrears for repairs, will be none the less repairs necessary for earning profits, although allowed to accumulate. But where a company buys a ship which needed repair, and spent a considerable sum on such repair, the cost is not ordinary business expense, but capital expenditure, and as such cannot be deducted in computing profits of the company. Lord Sands in *The Law Shipping Company Ltd. v. The Commissioners of Inland Revenue*, 12 T. C. 621, said :

"I base this conclusion upon two grounds : (1) The case of the *Highland Railway Company v. Balderston*, (1889) 16 R. 950, appears to me in point and the reasoning of the Lord President to be applicable. Repairs necessary at the time of purchase to render the subject of purchase serviceable fall to be added to the initial cost as a capital charge. (2) Upon ordinary business principles this outlay appears to me to be properly a capital charge. A prospectus of a company formed to purchase this ship would in ordinary course have shown the purchase price and the repairs immediately required as part of the initial capital outlay. It may be that the Appellants' company did not raise capital to meet these charges, but paid them out of future income. But, as pointed out by the Lord President in *Highland Railway Company* case, such considerations are not conclusive. The question is not from what source the charges were

¹ *Inglis v. Buttey*, 3 A. C. 552.

² *Ramnath Reddi v. Commissioner of Income-tax, Rang.* 175.

actually defrayed, but whether, according to accounting principles, they ought to be charged to capital or to income."¹

The necessity for repairs must arise on account of the use of the ship by the assessee in earning their profits. Therefore where a steamer was seized by Germans during the War, and was restored to the assessee in a state of disrepair and the assessee had to spend a large sum before the vessel was fit for use, it was held that the expense was a capital outlay. Lord Sands said, "The Respondents had no ship and were not in a position to carry on any business for four and a half years. At the end of this period they recovered their vessel in a dilapidated condition, spent a large sum in reconditioning her, and resumed trading. Was this a new start or was it simply the carrying on of an existing trading business? Was the expenditure of the nature of the capital outlay or merely a meeting of recurrent charges? It is clear that if the Respondents had purchased another dilapidated ship and reconditioned her the expense of such reconditioning would have been held to be capital outlay."² Does it make any difference that the ship which they so treated was their own old ship, of which they had recovered possession after four and a half years? I come to the conclusion that it makes no difference, and I do so on the grounds that the Respondents had not been in possession of the ship for four and a half years, had not, during that time, handled or traded with the ship, and that the dilapidations which had to be made good were not dilapidations suffered by the ship in the course of the Respondents' trading with her."

Lord Ashmore said, "What I have said seems to me to be in accordance with the rough test between income

¹ The Law Shipping Company, Limited v. The Commissioners of Inland Revenue, 12 T. C. 621.

² Law Shipping Company Limited cit.

expenditure and capital expenditure enunciated by Lord President Dunedin as follows: "Capital expenditure is a thing that is going to be spent once and for all, and income expenditure is a thing that is going to recur every year."¹

I adopt as reasonable, however, Mr. Justice Rowlatt's remark that stress ought not to be laid on the phrase "every year" and that the real test is between expenditure which is to meet a continuous demand as opposed to expenditure which is made once for all."²

Private Provident Fund.—While the Act makes no provision for contributions by employers to private provident funds constituted for the benefit of their employees being deducted in arriving at business income liable to tax, contributions to such provident funds by employers should be allowed as a business expense in all cases where the funds are constituted as irrecoverable trusts and where no part of the employers' contributions can be recovered by them. Where, however, such funds remain in the hands or under the control of the employers, no contributions by them can be allowed as a business expense; but in such cases actual payments made to employees leaving the service of the employer should be allowed as a business expense in the year in which such payments are made so far as such payments are made from the contributions of the employers whether in that year or in preceding years. As regards employers' contributions to "recognised" provident funds, see paragraphs 24 and 31.³

The same remarks apply to superannuation funds or reserves for the purposes of providing pensions to ex-employees. Actual sums paid as pensions to ex-employees or to the widow or children of an ex-employee should, however, be allowed as a business expense where the pensionary payment is a fixed or recurring one, but no claims on account of "pensions" should

¹ Vallambrosa Rubber Company, Limited v. Inland Revenue (1910) S. C. at page 525.

² Ounsworth v. Vickers, Limited, (1915) 3 K. B. 267 at page 275; The Commissioners of Inland Revenue v. The Granite City Steamship Company, Limited.

³ I. T. Manual, para. 64 (i), pages 206-207.

be entertained where the "pensions" are paid to persons who have or who at any time had a share or interest in the business.¹

Contributions for superannuation funds, or reserves for providing pensions to employees.—A lump sum contributed by an assessee to provide a nucleus of a Pension Fund for the benefit of its staff is a capital expenditure and not an admissible deduction in arriving at his profits for income-tax purposes.

Cave L. C. said: "But there remains the question, which I have found more difficult, whether apart from the express prohibitions, the sum in question is (in the words used by Lord Sumner in *Usher's Case*) a proper debt item to be charged against incomings of the trade when computing the profits of it; or, in other words, whether it is in substance a revenue or a capital expenditure. This appears to me to be a question of fact which is proper to be decided by the Commissioners upon the evidence brought before them in each case; but whereas in the present case, there is no express finding by the Commissioners upon the point, it must be determined by the courts upon the materials which are available and with due regard to the principles which have been laid down in the authorities. Now, in *Vallambrosa Rubber Company v. Farmer*,¹ Lord Duquoin, as Lord President of the Court of Session, expressed the opinion that "in a rough way" it was not a bad criterion of what is capital expenditure as against what is income expenditure to say that capital expenditure is a thing that is going to be spent once and for all and income expenditure is a thing which is going to recur every year"; and no doubt this is often a material

¹ I. T. Manual, para 64 (ii), page 207.

² 1910 S. C. 519; 5 T. C. 529.

consideration. But the criterion suggested is not, and was obviously not intended by Lord Dunedin to be a decisive one in every case; for it is easy to imagine many cases in which a payment, though made "once and for all", would be properly chargeable against the receipts for the year. Instances of such payments may be found in the gratuity of £ 1,500 paid to a reporter on his retirement which was the subject of the decision in *Smith v. Incorporated Council of Law Reporting*,¹ and in the expenditure of £ 4,994 in the purchase of an annuity for the benefit of an actuary who had retired which, in *Hancock v. General Reversionary and Investment Company*,² was allowed, and I think rightly allowed, to be deducted from profits. But when an expenditure is made, not only once for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital. For this view there is already considerable authority. Thus, moneys expended by a brewing firm with a view to the acquisition of new licensed premises,³ costs incurred in promoting a Bill which was dropped on the desired facilities being obtained by agreement⁴; and expenditure incurred by a ship-building firm in deepening a channel and creating a deep water berth (not on their own property) to enable vessels constructed by them to put out to sea⁵ have been held to be in the nature of capital expenditure

¹ (1914) 3 K. B. 674.

² (1919) 1 K. B. 25.

³ *Southwell, v. Savill Brothers*, (1901) 2 K. B. 349.

⁴ *A. G. Moore and Company v. Hare*, (1914) 6 T. C. 572.

⁵ *Ounsworth v. Vickers*, (1915) 3 K. B. 267.

and not to be deductible under the Income-tax Acts; and *Rowntree and Company v. Curtis* (1925) 1 K. B. 328, is to the same effect. I think that the principle to be deduced from this series of authorities rests on sound foundations and may properly be adopted by this House.

My Lords, in my opinion, the present case falls within the same principle. The payment of £ 31,784, which is the subject of dispute, was made, not merely as a gift or bonus to the older servants of the Appellant Company, but (as the deed shows) to "form a nucleus" of the Pension Fund which it was desired to create; and it is a fair inference from the terms of the deed and from the Commissioners' findings that without this contribution the fund might not have come into existence at all. The object and effect of the payment of this large sum was to enable the company to establish the Pension Fund and to offer to all its existing and future employees a sure provision for their old age, and so to obtain for the company the substantial and lasting advantage of being in a position throughout its business life to secure and retain the services of a contented and efficient staff. I am satisfied on full consideration that the payment was in the nature of capital expenditure, and accordingly that the deduction of the amount from profits although not expressly prohibited by the Act, was rightly held by the Court of Appeal not to be admissible."

Lord Atkinson said: "It is difficult to see on what principle the company are, for the purposes of the assessment of income-tax for the year in which the payment was made, entitled to deduct it from their profits and gains for that year, since it cannot, I think, be regarded as forming part of the cost by which those profits and gains have been acquired, nor as an expenditure which, however prudent

from the employers' point of view, was essentially necessary for the acquisition in that, or any subsequent year, of any portion of the profits and gains of the Appellants' business. It would certainly appear to me not to be—to adopt Lord Sumner's phrase used by him in his judgment in *Usher's Wiltshire Brewery, Limited v. Bruce*, “a proper debit item to be charged against incomings of the trade when computing the balance of the profits of it.” That is apparently the view of it taken by Lord Justice Warrington. At page 44 of the appendix in the present case he said: “The real question which we have to determine is whether this is a proper debit item to be charged against the incomings of the trade when computing the balance or profits.” He held it was not a proper debit then. Lord Justice Scrutton, after pointing out that the Attorney General's definition of capital expenditure, namely, “money expended upon a business which is intended to, and does, create an asset is capital,” cannot apply to the circulating capital of a trade or business, holds that the payment of this large sum of £31,784 by the company, which they were not under any liability to make, was either a withdrawal of capital from business for the purposes of the Fund, or capital employed in creating an asset or advantage in the business, something added to the business not in discharge of any existing liability but, in the result, creating a new asset. If the word “asset,” as used in this connection, be confined to something material—and I do not think it well can be so confined—then I am inclined to agree with Lord Justice Scrutton that, if the existence of this Pension Fund results in making the staff of the company more contented and less inclined to change their service and therefore on the whole, more efficient, these results when secured would amount to an “asset” of the Company's business. The Master of the Rolls expresses the same idea at the end of his judgment in the following words: “It appears to me that

when you consider what is the nature of this payment made, not for the purpose of meeting any actual liability, but only for the purpose of, in a very general way, improving the position of the staff, the right attribute to apply to it is that it was a payment made as and for the purpose of a capital outlay and cannot be deducted from the revenue as a payment made in the course of seeking profits and gains." Rowntree's case at 8 T. C. 678 is quite distinguishable from this.

In the case of *Hancock v. The General Reversionary and Investment Company*, (1919) 1 K. B. 25, Mr. Justice Lush, at page 37 of the report, after commenting upon Lord Dunedin's decision, acted upon by Mr. Justice Rowlatt in *Ounsworth v. Vickers*, (1915) 3 K. B. 267, said, quoting Mr. Justice Rowlatt "The proper test to apply is this: Was the expenditure—*i.e.*, the money paid to an insurance company to purchase an annuity for an actuary long in their service—incurred in order to meet a continuing business demand, in which case it would be treated as an ordinary business expense, a deduction of which was admissible; or was it an expenditure incurred once for all, in which case it should be treated as a capital outlay?" And he says, "I agree with that view,"—and he then proceeds to state the ground upon which he comes to the conclusion that the payment of £ 4,994, fell within the former class of payments and not the latter, and says: "Applying that test, I think that it necessarily follows that the £4,994 should be treated, as the pension was treated, as an ordinary business expense, and that the deduction should be allowed. It is the pension in another form; it is actuarially equivalent in value and it is identical in character. It was paid to meet a continuing demand which was itself an ordinary business expense, as the surveyor had treated it." I cannot find that this reasoning was ever expressly approved of in any authority. The learned Judge

apparently treats the payment of this large sum as if it were made by the company to one of its employees. Little assistance is to be got from Rowntree's Case and other cases owing to the special findings of the Commissioners on several questions of fact."¹

Premia paid for risk to employees.—Premia paid by an employer to cover the risk of liability to compensate any of his employees for injuries under the Workmen's Compensation or Accident Insurance Act (VIII of 1923) should be treated as business expenses and allowed under section 10 (2) (ix) as a deduction in assessing income from business.

The following principle should be observed in dealing with claims that bonafide expenditure for the welfare of the employees of a business should be allowed as a business expense. No contributions towards expenditure incurred by outside bodies which may benefit the employees of a company or firm incidentally with members of the general public, should be allowed, such as contributions for the support of clubs, recreation grounds, religious institutions, dispensaries, hospitals, schools and the like. If, on the other hand, an assessee maintains a school or a dispensary solely for the benefit of his employees reasonable expenditure on the upkeep of such an institution should be allowed as a working expense. Similarly, expenditure incurred in the maintenance of a conservancy staff employed to keep the surroundings of the dwellings of the employees of a concern in a sanitary condition should be allowed. In no case, however, should any capital expenditure be allowed, such as, for example, the amounts expended on the construction of latrines, drains, water-works or hospitals.²

Coolie charges etc.—Assessees sometimes receive from their constituents payments intended to cover Railway expenses, coolie charges, etc., which they have to incur in the course of their business. When payments are made out of the sums and are debited specifically to constituents they may be allowed as deductions from the assessable

¹ Atherton v. British Insulated and Helsby Cables, Limited.

² I. T. Manual, para 64 (iii), page 207.

income, without insisting on strict proof of payment by the production of vouchers, provided that it is reasonably certain that the payments have been made.¹

Gifts to charities—Dharmada.—Indian traders and businessmen charge their customers or clients a small fee on each transaction—for example so many pies on each bag of some commodity sold—the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes. Such customary subscriptions by clients and customers for religious or charitable (including educational) purposes, and the corresponding expenditure by the assessee, should be left out of account altogether in computing the taxable income, provided that the Income-tax Officer is reasonably satisfied that the sums in question are really applied by the assessee ultimately (and not necessarily in the year of collection) to the object for which they were ostensibly collected. No attempt should be made to separate these subscriptions from the trade expenses of the customers or clients to whom they are charged and to disallow them as not being trade expenses.²

But a payment made wholly gratuitously, outside the course of business management is not a permissible deduction.³

Sums received for political purposes.—Sums received for political purposes should be included in income and the corresponding expenditure on these purposes should not be allowed as a deduction from the taxable income.⁴

Audit.—Strictly speaking, the cost of audits and similar operations conducted specially for income-tax purposes, in connection with assessments, with appeals, or with revision petitions cannot be allowed as a deduction from taxable profits. (Ruling of the Madras High Court in Secretary, Board of Revenue (Income-tax), Madras versus D. Munisami Chetty & Sons I, Srinivasan's Tax Cases, page 227.)

¹ I. T. Manual, para 64 (vi).

² I. T. Manual, para 64 (vii), page 208

³ Anglo-Persian Oil Co. Ltd. v. Commissioner of Income-tax; Bengal, 7 I. T. L. J. 161; I. L. R. Cal. 840 ; A. I. R. 1932 Cal. 777.

⁴ I. T. Manual, para 64 (viii).

The reason for this is, of course, that whereas an audit or similar operation conducted in the ordinary course of business is properly treated as a "business expense," it is clear that one conducted purely in connection with income-tax proceedings cannot be said to be incurred solely for the purpose of earning the profits or gains subject to income-tax (see section 10 (2) (ix)). Since, however, there may be difficulty in individual cases in determining whether an audit or similar operation has been conducted wholly or partly for business purposes and, in the latter case, what portion of the expenditure incurred in connection with it can properly be treated as a "business expense", it has been decided that audit or other accountancy services in connection with an assessee's accounts for the previous year rendered before his return of income is made, if such a return is made on the due date, or within any extended period allowed by the Income-tax Officer nor its submission should be treated as work done for ordinary business purposes and therefore the expenditure incurred thereon should be regarded as an admissible deduction in computing taxable income.¹

Embezzlement.—According to Patna High Court loss by embezzlement is of the nature of capital expenditure, but a loss incidental to the conduct of the business and as such an admissible deduction.² But a full Bench of Madras High Court has held that a loss by embezzlement could not be called a loss incidental to the conduct of the business, and the case of loss by embezzlement was held analogous to the case of a trader who having collected his profits is subsequently robbed of the same. Dissident judgment was delivered by Anantakrishna Ayyar J. who held that the loss was a permissible deduction, and it is respectfully submitted lays down the law correctly. Anantakrishna J. observed as follows:—

Per Anantakrishna Aiyar J.: "It was also argued that in the case of money-lending business of Nattukottai

¹ I. T. Manual, para 64 (x), pages 208-209.

² Jagarnath Therani v. Commissioner of Income-tax, A. I. R. 1925 Pat. 408; 4 Pat. 385; 2 T. C. 4.

Chetties, the loss in question must be taken to be loss of stock-in-trade. On the other side, it was argued for the Crown that the loss in question could not be said to be an expenditure incurred much less, solely, for the purpose of earning such profits or gains, and that in any event it should be taken to be expenditure in the nature of "capital" expenditure. It was also argued that the monies in question could not be said to be "stock-in-trade" in the ordinary sense of the expressions. Having regard to the way in which such people carry on their money-lending business it would seem to be essential for the successful carrying on of their business to have such with them even after "the usual banking hours." They carry on their business operations as is well known, even after the offices of the European Banks are closed for business for the day. Keeping monies with them for purposes of their trade after such office hours could not, therefore, in my view, be said to be anything else than keeping monies in the usual course of their business. The profits made by them by doing business after the usual office banking hours are surely liable to income-tax. The finding as I understand it, is that in the usual course of business the remaining cash, etc., on hand and the jewels received on pledge from the customers were kept in the "strong-room" of the business premises, and that thieves broke into the strong-room and stole the cash and currency notes and the jewels. The fact of theft having been found, I think that the loss in question should be taken to be a loss connected with or arising out of the money-lending trade or business of the assesseees. With reference to the jewels thus lost the income-tax authorities have, and, in my opinion, rightly made allowance. But I think that allowance should be made also for the cash and currency notes amounting to Rs. 9,335 thus lost. I am unable to agree with the contention of the Crown that the loss in

question, should, if at all, be taken to be loss of "capital". It is true as pointed out on behalf of the assesseees, that the profits of the Moulmeingyun business for the period in question was computed by the income-tax authorities to be over Rs. 20,000 but that circumstance by itself is no ground for holding that the item in question should be taken as loss of profits and not loss of capital. Whether a particular item is really capital expenditure or not has to be decided having regard to various considerations. Of course it is well established that when once profits have been earned during the period, it does not matter how the same is dealt with subsequently.

I am inclined to the view that in the case before us, the cash and currency notes, etc., lost, should be taken to be "stock-in-trade" of the assesseees' business. What should be considered as stock-in-trade of a business should be decided after having regard to the nature of the particular business, its requirements, and other circumstances essentially connected with the successful carrying out of the particular business.....

Turning to the English Text-Books on Income-tax Law, I find the following statements in Sander's Income-tax 3rd edition. At page 310 it is stated, that "a deduction is allowed in respect of employees' theft". At page 196, it is stated, that "loss from embezzlement is deductible". Similarly at page 163, "deduction is allowed in practice for the loss arising from defalcations of employees". At page 203, there are two passages which are rather important "a deduction is permitted in practice for fire insurance premiums", also, "loss of stock through fire is deductible in so far as it is not recovered by insurance but loss of building does not form an admissible deduction." I also note that, "loss by flood or tempest" is

allowed in case of assessments under Schedule A. The above statements so far as they go would seem to lend support to the assessee's contention in the present case."¹

"Sums embezzled by an employee are an admissible charge against the business of an employer."²

But where money does not form the stock-in-trade of a business, nor is its expenditure necessary for carrying on the business or for the purpose of earning the receipts of the assessee, e.g. a loss of money due to an armed dacoity, is a loss of capital and no allowance can be made for it.³

Pension—commuted value of.—A lump sum paid to purchase an annuity granted to a servant of a company by a resolution of the company, is an expense incurred in the business and not in the nature of a capital expenditure and is an admissible deduction.⁴

Advertisement expense.—Ordinary expenditure in advertisements would be regarded as business expense and as such an admissible deduction. What is a necessary and ordinary advertisement would in each case be a question of degree, considering the nature and magnitude of the business concerned. Thus special advertisement, e.g., in connection with the increase of capital or reconstruction of a company cannot be regarded as ordinary advertisement incidental to the carrying on of business, and will not be deducted in computing profits.⁵

¹ S. P. S. Ramaswami Chettiar & others v. Commissioner of Income-tax, Madras, 59 M. L. J. 403.

² I. T. Manual, para 64 (v), page 207.

³ L.W. Gadodia & Co. v. Commissioner of Income-tax, Punjab, 1934 I. T. L. J. page 212.

⁴ Walson's Case, 13 Tax Cases, 560.

⁵ Watney v. Misgrave, 1 Tax Cases 272.

Fine or Premium.—Money paid by way of fine or premium as landlord's dues under a contract for the grant or use of land on which a business is carried on, is capital expenditure.¹ Similarly, a sum paid to secure the renewal of a lease of the premises is capital expenditure.²

Calls on shares.—Payments made on account of calls of a company by an assessee are in the nature of capital expenditure.³

Cost of removal and renewal of old shops, etc.—Cost of removal of business from one set of premises to another, or cost of renewal of business is capital expenditure.

Lord McLaren observed :

“I think that the cost of transferring plant from one set of premises to another more commodious set of premises, is not an expense incurred for the year in which the thing is done, but for the general interests of the business. It is said, no doubt, that this transference does not add to the capital value of the plant, but I think that is not the criterion. There are costs that would not properly be set against the income of the year, and which yet may not add to the capital value. Suppose a person is imprudent enough not to insure his premises or his goods, which can be insured and they are burned down, and he has to replace the building, he could not be allowed to charge the new building against the income of the year, although the putting of it up does not add to the value of his property, but merely enables it to maintain its original value. I agree, therefore, that the cost of re-erecting the cranes and the cartage of materials being a thing not done for the benefit of the one year, is not a proper deduction from income.”⁴

Loss on qualifying shares.—Where the assessee, a contractor, was required to purchase shares in a company

¹ Manchester Castle School, 8 Tax Cases 149.

² Mac. Lagart v. B. & R. Strump, 10 T. C. 17.

³ Jacobs Young & Co., 11 Tax Cases 223.

⁴ Granite Supply Association Limited v. Kitton.

in order to secure contracts from it, which he sold at a loss to secure new contracts, it was held that the loss was capital loss.

Atkin J. said :

".....Profits are to be ascertained according to ordinary commercial principles, except so far as you can find that those principles are modified or altered by the express words of the Statute, and that, if, in fact, that which has been done is an investment in the nature of capital, and that the loss that has been suffered is a loss in the nature of a capital loss, then such a loss could not properly be deducted when you are estimating the annual profits or gains for a particular year."¹

But when the assessee carried on business of buying and selling of shares it would be revenue loss and not capital loss, and as such a permissible deduction.

The assessee, a private limited company, was formed early in 1920 by two private English Companies and at the same time the assessee company entered into an agreement with the English Companies for the purchase of a huge block of shares held by them in the Burma Corporation, Ltd., in consideration of allotting to the vendors an equal number of its own shares of the nominal value of Rs. 200 each and accordingly allotted to them half its total number of shares. The two English Companies never handed a single share to the assessee. In November 1923, they executed fresh agreements with the assessee whereby they agreed to forego half the number of shares and the shares already allotted were to be taken as the whole purchase price payable. The English Companies were empowered to sell the shares with the consent of the assessee and the proceeds of sale were to be paid to the assessee together

¹ Scott v. Hoddinolt, 7 T. C. 85.

with the dividends. The Burma shares were accordingly sold in January 1924 by the English Companies at Rs. 168 per share (converted into rupees).

The sale proceeds were not handed over to the assessee company but were kept as a deposit by the English Companies. In connection with the assessment to super-tax in respect of the dividends from Burma shares, and interest amounting to over Rs. 20 lakhs, the assessee claimed to set off Rs. 50 lakhs, loss resulting from the acquisition and the sale of shares. It was held that the difference between the nominal value of the shares given and the market value of the assets purchased was sufficiently great as to entitle the Commissioner to challenge the adequacy of the consideration given by the English Companies and that there was in fact no trading loss by the Indian Company in respect of the Burma shares. It was further held that, in view of the fact, that the assessee company was empowered by its Memorandum of Association to deal in shares and also to enter into an agreement for the purchase of Burma shares, any loss incurred by the assessee in the sale of Burma shares would be a revenue loss.¹

Loan.—An advance made by a manufacturer to a person under a contract for supply of raw material to be used for the purposes of manufacture is capital expenditure.²

Law and Legislative costs.—The expenses incurred by an assessee in employing lawyers and accountants in connection with dispute between him and Government

¹ Trustees Corporation (India), Ltd., v. The Commissioner of Income-tax, Bombay.

² Marsden & Sons, 11 T. C. 217.

regarding excess profit duty, or expenses incurred by him in arriving at the income on which assessment to tax was made, or expenses incurred in drawing up an income-tax return is not spent for the purposes of earning profit and is not a permissible deduction.¹

Similarly, the expenses incurred by a company in applying to court to reduce its capital to enable it to declare a dividend, and wipe off a debit balance sheet are not incurred for the purpose of trade and cannot be deducted.²

Law expenses incurred in connection with rearrangement of mortgages existing on land on which the business of the assessee is carried on is capital expenditure.³

Costs of defending a company in a law suit against charges of breach of rules, or a fine or a penalty imposed on it are not expenses or loss connected with trade.⁴

Expense for promoting a bill in parliament for greater facilities for the business of the assessee is capital expenditure.

There was dissatisfaction amongst the traders with regard to the nature of the facilities given by a railway company, a firm of coal masters joined with other traders in promoting two Bills in Parliament for the construction of a railway line which was intended to give them the necessary

¹ Boards of Revenue v. Muniswami Chetty, 47 Mad. 653 A.I.R. 1924 Mad. 205.

² Archibold Thomson Black & Co., 7 Tax Cases 158.

³ Small's Co., 12 Tax Cases 253.

⁴ Warnes & Co., 14 Tax Cases 227 ; Alexander Von Gliben & Co., 12 Tax Cases 232.

facilities and to make them independent of the railway company. The bills were eventually dropped by agreement by which the railway company promised all the railway facilities which the traders desired. The question was whether certain expenditure incurred by the firm in the year of assessment in promoting the bills was to be treated as on revenue account or on capital account. It was held that the claim made by the firm was not allowable deduction. The Lord President held that the expenditure was clearly a capital expenditure and not an expenditure on account of revenue. Lord Skerrington was of opinion that "the expenditure in question was not money wholly or exclusively laid out or expended for the purposes of the appellants' trade."¹

Similarly money spent by a brewer in combating drink campaign, and in carrying on a campaign against prohibition is capital expenditure and is not an admissible deduction.²

Cost of raising Debentures.—Commission paid to brokers and other expenses incurred in raising money by a mortgage company, which raised money by the issue of debentures and made profit by lending it out on a higher rate of interest, is capital expenditure and therefore not an admissible deduction.³

Sinking Fund.—A sum of money applied to a sinking fund for the extinguishment of debts of the assessee is liable to tax, the reason being that once profits or gains have been earned, it is immaterial for what purpose they are applied. So is the surplus of the income of a corporation applied in

¹ A. G. Moore & Co. v. Hare.

² Wend & Co. v. Commissioners of Taxes, 1923 A. C. 145.

³ Texas Land and Mortgage Co., 3 Tax Cases 255; Scottish Mortgage Co. of new Mexico, 2 Tax Cases 165.

forming a sinking fund to extinguish a mortgage created for its purposes, liable to tax.¹ Similarly a sum set aside, compulsorily under a statute, as a sinking fund to pay off a mortgage which the assessee is authorized to raise is not a trade expenditure.² Tax is levied even where the surplus is not applied to any special purposes, but goes to make a sinking fund for the general purposes of the assessee.³ Interest received on money contributed towards a sinking fund by investment is income, and as such liable to tax.⁴ Where an undertaking is started with a guarantee of interest at certain rate being given by the Government on capital invested, but the assessee is able to raise money on a lower rate and applies the difference between the guaranteed interest and what it has actually to pay, in constituting a sinking fund for the payment of the debt, the whole of the guaranteed interest is liable to income-tax.⁵

Similarly contributions to a sinking fund to provide against possible loss in machinery and plant set up for working up of mineral deposits, etc., due to the exhaustion of such deposits is not allowable as expenditure.⁶ But where the contributions are partly on account of some business expense, e.g., hire, they are admissible to that extent. A coal company hired wagons from a wagon company, for the carriage of coal on condition that it was to pay a fixed sum for a number of years, to use the wagons at its own risk, and to keep in repair, and at the end of the year to have the option of

¹ Mersey Dockes etc., Board v. Lucas, 2 T. C. 25.

² City of Dublin Steam Packet Co., 6 Tax Cases 101.

³ Poddington Burial Grounds, 2 Tax Cases 48.

⁴ Mayor of Soudon, 6 Tax Cases 313.

⁵ Imp. Brazilian Railway, 2 Tax Cases 58.

⁶ The Aliansa Co., 5 Tax Cases 60.

buying the wagons at a nominal price, it was held that the annual payments constituted partly hire and partly the price of an offer to purchase at a nominal price and that so far as the payment constituted hire, they were to be treated as trade expenditure and as such an allowable deduction.¹

Depreciation of securities.—The assessee who keeps securities, not as his stock in trade, but as a part of his fixed capital as emergency reserve, is not entitled to a deduction on the amount of depreciation in the valuation of such securities from its net profits for the year under assessment, as it is depreciation of capital and not trade expense.²

Exhaustion of Capital.—Exhaustion of capital, e.g., by working of mines and gradual cutting of a forest acquired by purchase or under a 99 years' lease is loss of capital and is not an admissible deduction.

An English company owned nitrate grounds in Chili, the raw material from which nitrate was extracted was found in natural state on the ground. Nitrate was extracted in a factory set up near the deposits and with the help of machinery. The land, the factory, and the machinery would become useless after the nitrate was exhausted. On behalf of the company it was claimed that allowance be made for the cost of raw material worked up and exhausted every year. The contention was negatived and it was held that it is "merely another case where capital has been embarked in a wasting matter" and "that it is money wholly and exclusively laid out and expended as capital."³

¹ Darngavil Coal Co., 7 Tax Cases 1.

² Punjab Material Bank, A. I. R. 1926 Lahore 373; 2 I. T. C. 184.

³ The Alliance Co. Ltd. v. Bell, 6 Tax Cases 172.

A New Zealand company acquired certain forests by purchase or by a 99 years' lease, and cut down timber for sale. The contention of the company that the value of the timber cut down every year should be deducted was negatived.

Per Lord Shaw:—"...there is no obligation upon the company immediately to cut down and remove the timber, or indeed to do so at any specific date, their rights with regard to the timber being co-extensive in time with the currency of their leases. The case is thus removed in fact from an analogy with decisions in which a sale of standing timber was coupled with the duty of its instant removal from the ground.....the transaction under which these timber rights were acquired was not one under which a mere possession of goods by contract of sale was given to the appellant company, but was one under which they obtained an interest in, and possession of, land. So long as the timber, at the option of the company, remained upon the soil, it derived its sustenance and nutriment from it. The additional growths became *ipso jure* the property of the company. All rights of possession necessary for working the business of cutting or even for preserving uninjured the standing and growing stock of timber were ceded under the leases. All this, together with the business facilities for removal and sale, was granted to the company which thereby became invested with the possession of and an interest in the land. ...It has long been the law of the United Kingdom that the exhaustion of capital, however it might be treated on strict actuarial principles or according to certain principles of economics, may for the purpose of taxation be treated as profit. The profit may be temporary, and so when it ceases the capital may be gone, and with the going of the capital there will also go the subject and the possibility of the tax.....

The law so clearly stated with regard to the working of coal and nitrates, and settled upon a broad general principle is in no way different when it comes to be applied to timber-bearing lands. The principle as to the true reason for holding that such timber rights are of the nature of possession of and interest in the land itself, has long been settled.¹

Bad debts.—What is meant by bad debts is that the amount was due to the assessee and has arisen in the course of their trading and subsequently proved to be unreliable. Where the rule speaks of a bad debt it means a debt which is a debt that would have come into the balance sheet as a trading debt in the trade that is in question and that it is bad. Thus where on the death of the managing Director of a company it was found that many cash payments relating to his private affairs passed through the company and that a large sum was due to the company from him, which could not be recovered from his assets it was held that the loss was not a trading loss and was therefore not an admissible deduction from the company's profits.¹

Whether a debt is a bad debt and if so at what point of time it became a bad debt, are questions of fact to be decided in the event of a dispute by the appropriate tribunal and not by the *ipse dixit* of any one. But the conclusions of the appropriate tribunal must be based on relevant and admissible evidence, and the question whether there is such evidence to support the conclusions arrived at by the income-tax authorities, will still remain a question of law open to consideration by the High Court.²

¹ Curtis V. J. & Goldfield Ltd., 9 Tax Cases 319.

² Hukam Chand Jagdhar Mal v. The Commissioner of Income-tax, Punjab, 1935 I. T. L. J. page 297.

Whether a debt became a bad debt in a particular year or later is a question of fact.

After sale of mortgaged property in execution of mortgage-decree the mortgagee obtained personal decree for the amount still remaining due. The question as to when the amount due under personal decree became bad debt was discussed and was held to be a question of fact.¹

Rates, Taxes, etc.—The proviso to section 10 (9) lays down that no allowance can be made in respect of any cess, or rate, or tax, levied on the profits. It would appear that the proviso makes only such taxes, rates and cesses inadmissible as are levied on the basis of profits, whether they are fixed as a certain percentage of such profits or are fixed at a certain fixed amount according to the profits. In either case the cesses, rates or taxes become leviable only after the profits have been earned, to make such rates etc. an inadmissible deduction. Thus municipal taxes levied on professions, trades, etc., are not admissible deductions.² Nor can allowance may be made for income-tax payable out of the income earned.³

But where the payment of taxes or rates or cesses is necessary for the earning of profits or gains, such payment would be regarded as an admissible deduction. Thus where a municipality imposed a compulsory toll on companies not only on the basis of its profits, but as a condition precedent to the carrying out of such business, the payment of such

¹ Hukam Chand Jagdhar Mal v. Commissioner of Income-tax, Punjab, 1936 I. T. L. J. page 116.

² King and Partridge, A. I. R. 1925 Mad. 368 ; 2 I. T. C. 142.

³ Aston Gas Co. v. Attorney General, 1906 A. C. 10 ; Eastern Extension Telegraph Co., 44 Mad. 1489.

taxes is for the purposes of trade and as such an admissible deduction.¹

A rate on the annual output of a mine imposed by the Behar and Orissa Mining Settlement Act, 1920, and a cess in respect of the annual export of coal and coke from a mine imposed on the proprietor of a colliery by the Jharia Water Supply Act, 1924, are admissible deduction.² But the income which the assessee gets as rents and royalties from colliers owned by him is not income derived from trade, but income falling within the head "other sources" and in assessing such income to income-tax any amount paid by the assessee as road cess and public works cess cannot be deducted in the computation of taxable income.³

Commission to underwriters.—The amount of money paid by a joint stock company to the underwriters on an issue of new shares increasing the capital of the company, cannot be allowed to be deducted as an expenditure. "The deduction allowed is in respect of any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits. It has been agreed that the words "such profits" refer only to the profits earned in the year for which the profits are assessed, but the section 9 (1) (see Act of 1915) says that tax shall be payable in respect of profits of any business, and the words "such profits" refer to the profits earned by the business generally and not to the profits of a particular year on which assessment is levied.

¹ Nedungadi Bank, A. I. R. 1924 Mad, 693; 1 I. T. C. 355.

² *In re* K. M. Selected Coal Company of Manbhum, A. I. R. 1924 Pat. 670.

In re Raja Jyoti Prasad Singh Deo, 1 I. T. C. 103; A. I. R. 1921 Pat. 81.

This is obvious because expenditure necessarily precedes the earning of profits and such of the profits of one year must be earned by the expenditure in the previous year or years.

Now the expenses incurred in raising capital on the floatation of a company are included in the term preliminary expenses and are not included in any deduction mentioned in section 10..... Expenses incurred in raising capital are expenses of exactly the same type whether the capital is raised at the floatation of the company or thereafter.¹

Trade Losses.—Losses incurred in the course of the business or trade carried on by the assessee are of course to be deducted in ascertaining the income liable to tax. Loss for which allowance can be made, must be loss actually incurred and not loss which might be incurred in future.² Nor can a loss not incurred during the accounting period be allowed.³

A loss incurred by one branch of a business may be set off against the profits of another branch. Similarly loss incurred by one business may be set off against income from another business carried on by the assessee.⁴

Also a partner who suffers losses in a business carried on by a firm of which he is a partner along with other partners may set off those losses against income earned by him in his individual business.⁵

¹ *In re* Tata Iron and Steel Co. 1 I. T. C. 125 ; 45 Bom. 1306.

² Anglo Brewery Co., 12 Tax Cases 803.

³ Natal Coal Company, 12 Tax Cases 1017 H. L.

⁴ Munisami Chetty, A. I. R. 1924 Mad. 205.

⁵ Arunachellan Chettiar, A. I. R. 1924 Mad. 474 ; 1 I. T. C. 278.

Where an assessee carrying on a mica business, is obliged to stop it on account of a cyclone but still incurs expenditure during the year of account with the intention of resuming the same if conditions and prospects proved favourable, but the business in fact was never resumed, the expenditure so incurred is allowable as a deduction against the profits and gains of the assessee's other businesses.¹

Where a company carries on five separate concerns, the loss in any one or more of the businesses can be set off, under section 24, against the profits and gains of the more successful businesses. But section 10 only deals with businesses which are being carried on, and accordingly where some of the businesses are not being carried on the losses arising from such businesses are of a capital nature and cannot be set off against profits of other businesses.²

But loss sustained by sale of Government securities by an assessee, who is a general produce-dealer, is not loss sustained in the course of business and no deduction can be claimed in respect of such a loss.³

Servants' Lodging, etc.—Expenditure incurred by an assessee in respect of boarding (basa-kharch) and conveyance (bidagri) allowance to his employees with a view to retain their services for the benefit of the business and to increase their efficiency can be deducted in computation of assessable income, as incurred solely for the purpose of earning profits or gains.⁴

¹ The General Corporation Ltd. v. Commissioner of Income-tax, Madras, 1935 I. T. L. J. page 501.

² South Indian Industries Ltd. v. Commissioner of Income-tax, Madras, 1935 I. T. L. J. page 163.

³ Hira Nand Jai Ram Singh, *in re* 1935 I. T. L. J. page 426.

⁴ Jagar Nath Therani, 4 Pat. 385; A. I. R. 1925 Pat. 408; 2 I. T. C. 4.

Payment to rival contractor for keeping off competition.—Money paid to a rival contractor by the assessee in order to induce the former not to compete with him, is not an expense made for the purpose of working the contract, but for obtaining it, and is in the nature of a capital expenditure and as such an inadmissible item of expense.¹

Cost of Replacement of old Law books.—Money spent by a lawyer in replacing old editions of law books by new ones is a capital expenditure.²

Travelling Expenses.—The owner of a business who has to travel for the purpose of his business, e.g., the owner of a Circus is entitled to deduct his travelling expenses in calculating his profits from such business as the same are made for the purpose of earning profits.³

Method of converting the net profits of sterling companies into rupee for the purposes of income-tax.—Where the business of a sterling company is transacted entirely in India, there is no need for the Income-tax Officer to look at the sterling accounts as he can get a record and ask for a return of the transactions in rupees. He should act in the same way in cases where the profits of the Indian branch of a company operating in other countries can be separately ascertained. In the case of a company operating through local branches in different countries where the profits of the Indian branches cannot be ascertained separately but have to be deducted from the total sterling profits of the company from all its operations, the net profits of the company for the purposes of assessment to Indian income-tax should be converted into rupees at the rate of exchange ruling on the last day of the year to which the account relates unless the Income-tax Officer

¹ Raosahab A. S. Alagaman Chetty v. The Commissioner of Income-tax, Madras, A. I. R. 1928 Mad. 902.

² Sir Hari Singh Gour, 3 I. T. C. 333.

³ Eastmans Ltd. v. The Commissioner of Inland Revenue, 14 T. C. 218.

is able, by an examination of the accounts, to ascertain the average rate of remittances throughout the year and to deduce from that the rupee profits of the Indian branches.¹

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.

Professional earnings.
P. 50.

(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;

P. 67,69
R. 9 A.

(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.

P. 15.

History.—Before 1918 professional income was taxed under the head "other sources." By the Income-tax Act of 1922 the words "or gains" were added in the first two

¹ I. T. Manual, para 65, pages 209-210.

sub-sections and the words "profits or gains" were substituted for "income" in sub-section 3. The new sub-clause 2 was substituted for the old sub-section by the Income-tax Amendment Act XVIII of 1933. The amendment made by the Act of 1922 were mere verbal amendments. The result of the amendment of 1933, however, is to provide for allowances to professional men in respect of depreciation and obsolescence of buildings, machinery or apparatus, appliances, plant, furniture and other capital assets of the assessee used solely for the purpose of his profession or vocation. Before the Act of 1933, such allowance was permitted only in case of profits of a business.

Profession or Vocation.—See also notes to section 4 (3) (vii) under the head casual profits.

The words profession or vocation are synonymous, both meaning an occupation or a calling. The word profession, as distinguished from a vocation, means according to Webster "the occupation if not mechanical, agricultural, or the like, to which a man devotes one's self." Profession seems to imply the idea of a liberal education and seems to be applicable to liberal professions as distinguished from a calling which is more or less mechanical.

Thus the income from the occupation of an editor,¹ schoolmaster,² an agent with special skill in income-tax,³ have been held to be professional incomes. Fees paid to a solicitor who is also a trustee of a trust, out of trust funds for professional services rendered to the trust, have been held to be professional income.⁴ It may at times be a

¹ Commissioners of Inland Revenue v. Masse, 12 T. C. 41.

² Commissioner of Inland Revenue v. North, 2 K. B. 705.

³ Carne v. Commissioner of Income-tax, 12 T. C. 245.

⁴ Jones v. Wright, 13 T. C. 221.

difficult question to decide as to what constitutes a profession as distinguished from business. There is no Indian case on the point yet. Profession or vocation necessarily implies personal qualifications and activities.

Illegal profession or vocation.—Income from illegal vocations is as much liable to tax as from legal ones. The Act does not make any distinction between an illegal and legal profession or vocation for the purpose of tax.¹

Company.—A company cannot exercise a profession being a legal entity which can have no personal qualifications, although all its members happen to be professional men and the nature of work done may be exactly the same as done by professional men.²

Casual Income.—See notes under section 4 (3) (vii).

Allowable deductions: Professional earnings—Deductions—Any expenditure that is claimed as a deduction under this sub-section must have been incurred solely for the purposes of the profession or vocation. No deduction can be allowed in respect of personal expenses of the assessee or expenses of the assessee or expenses of a capital nature ; but an allowance should be made in respect of depreciation of buildings and depreciation and obsolescence in respect of machinery, apparatus, appliances, plant, furniture or other Capital assets used in a profession. The term "Capital assets" is intended to include books purchased by an assessee for the purpose of his profession. Two conditions must be satisfied before a claim for depreciation or obsolescence can be admitted : firstly, that the machinery, plant, etc., in respect of which a claim is made should be used solely for the purposes of the profession or vocation the earnings from which are computed and secondly, that they should be the property of the assessee. No allowance can be claimed if they are leased from others.

¹ Partridge v. Mallandine, 2 T. C. 179.

² Wan Esplen Ltd. v. Commissioners of Inland Revenue, 2 K. B. 731.

³ I. T. Manual, para. 67 (1), page 210.

An assessee is not entitled to deduct an expenditure not actually incurred by him before the close of the account year, and a deduction can be claimed only if the expense is incurred or the liability incurred is satisfied before the close of the year.¹

Inadmissible deductions, Capital expenditure and Personal expenses.—Expenses incurred by a pilot in keeping a motor car to take him to and back from the aerodrome and the expenses incurred by him in maintaining a telephone in his house were held to be in the nature of a personal expenditure.²

Similarly, expenditure incurred by a lawyer in keeping a motor car were held to be personal expenditure,³ so also the travelling and hotel expenses of a recordie,⁴ or of a clerk to the justices,⁵ are personal expenses.

Money spent by a lawyer in replacing old books by new ones is a capital expenditure.⁶

As to the meaning of the word “capital expenditure” see notes under section 10 supra.

Professional subscriptions like subscriptions to an association are admissible.⁷

Professional tax.—A professional tax levied by a municipality is not an admissible deduction, as such a tax is

¹ Commissioner of Income-tax v. Jai Narain Moti Ram, A. I. R. 1929 Nag. 243.

² Nolder v. Walters, 15 T. C. 330.

³ Sir Hari Singh Gour, 3 I. T. C. 333.

⁴ Ricketts v. Colquopown, 1926 A. C. 1.

⁵ Cook v. Knott, 2 T. C. 246.

⁶ Sir Hari Singh Gour, 3 I. T. C. 333.

⁷ Simpson v. Tate, 4 A. T. C. 187.

not necessary for the purposes of earning the income, and is made out of the income after it has been earned. But a professional tax which is paid out of the income after it has been earned, is quite different from license fee, which is a necessary condition for the carrying on of the profession.¹

Rule 9-A. For the purpose of obtaining an allowance for depreciation under section 11 (2) (ii) of the Act, the assessee shall furnish particulars to the Income-tax Officer in the form included in rule 9, entering in columns 1 and 4 references not only to buildings, machinery, plant or furniture but also to apparatus, appliances and other capital assets.²

The conditions specified in section 10 (2) (vi) and (vii) regarding the calculation of depreciation, etc., apply to cases under this sub-section also, viz., (1) the particulars prescribed should be furnished to the Income tax Officer; (2) where full allowance cannot be made in any year owing to there being no earnings at all or the earnings being insufficient to grant the full allowance, the allowance or part of the allowance to which effect has not been given should be carried forward to succeeding years; and (3) the aggregate of all the allowances made should not exceed the original cost to the assessee. Any obsolescence allowance granted under this sub-section should be limited to the difference between the original cost to the assessee of the machinery, etc., as reduced by the depreciation allowance already granted and the scrap value or sale price as the case may be.³

The word "income" in section 12 (1), Income-tax Act, is not limited by the words "profits" and "gains". Anything which can properly be described as income is taxable under the Act unless expressly exempted. Where pursuant to a covenant in a sale-deed an annual sum is payable to the vendor during his life in part consideration of the sale, the life annuity is income assessable to income-tax and supertax. It is clearly a case where the owner of an estate has ex-

¹ Commissioner of Income-tax v. King and Partridge, A. I. R. 1926 Mad. 368 F. B.

² I. T. Manual, Rule 9-A.

³ I. T. Manual, para. 67 (ii), page 210.

changed a capital asset for (inter alia) a life annuity which is income in his hands. It is not a case in which he has exchanged his estate for a capital sum payable in instalments. The life annuity is income as it is the produce of one of the items (the covenant) which the vendor has taken in exchange for his estate.¹

12. (1) The tax shall be payable by an assessee Other sources. under the head "Other sources" in P. 40. 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).

P. 68, 69 (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.

History.—The present section was added by the Income-tax Act of 1918. By the Act of 1922 the words "and gains" have been added after the word "profits" and the words "making or earning such income, profits or gains" have been substituted for the words "making such income or earning such profits" which occurred in the Act of 1918.

Scope.—Section 12 is the residuary section which applies to incomes from sources other than those falling under the five heads specifically enumerated in section 6. When a particular income can be brought under any of the five heads the residuary clause should not be applied. When the

¹ Gopalsaran Narain Singh v. Commissioner of Income-tax, Bihar and Orissa, 1935 I. T. L. J. page 226 at 227.

income cannot be brought under any such head, it will be taxed under this section, provided of course it is taxable.¹

Income from settlement to collect particular kind of earth.—An income from the settlement of the right to collect a particular kind of earth in a particular area during a particular season for the purpose of extracting saltpeter, (called Nimak Sair) and which is not casual or nonrecurring, is taxable under this section.²

Salami—“The assessee, a limited company, took a lease of certain house property, which was subject to a building lease previously granted in favour of Tata Industrial Bank Ltd, containing a forfeiture clause to come into force, in the event of the Bank going into liquidation. The Tata Industrial Bank went into voluntary liquidation to effect an amalgamation with the Central Bank of India Ltd. The assessee claimed to determine the lease but finally compromised their claim by accepting one lac of rupees and made over the premises to Central Bank of India at an enhanced rent. It was held that the sum in question was part of the enhanced value of the assessee's assets consequent on the forfeiture of the lease and hence was not assessable.”³

Assessee sub-leasing houses built on land taken on a lease Income from.—Where the assessee had taken land on a long lease under which the land together with buildings was to revert to the lessor on the expiry of the lease, and erected buildings on such land and received rents from build-

¹ *Probbhat Chandra Barua v. Emperor*, A. I. R. 1930 P. C. 209.

² *Maharaja Garu Mahadeo Asharam Prasad Sahai Bahadur v. Commissioner of Income-tax, Bihar and Orissa*, A. I. R. 1927 Pat. 133.

³ *Goottu Estate Ltd. v. The Commissioner of Income-tax, Bengal*, A. I. R. 1930 Cal. 1; 4 I. T. C. 324.

ings, the rents so received should be taxed under this section and not under section 9.¹

Money received from licensee of land used for brick kilns and for removing earth is of the nature of royalty and hence assessable under this section.²

Where impartible zamindari was held exclusively by the eldest son of a Rajah, but the other sons were settled with certain mauzas in lieu of maintenance, the grant of which was resumable at the will of the Rajah, the income from such property by way of royalty is assessable under this section.³

Where the assessee is a member of a Hindu undivided family, of which the other member is the holder of an impartible estate, a sum of money received annually by the assessee as maintenance from the impartible Raj is not liable to income-tax and super-tax unless it is shown that the assessee is not entitled by custom to any maintenance out of the income of the Raj.⁴

Examiners' Fees.—Fees received by a lawyer as a university examiner's fee are taxable under the heading 'other sources', under this section.⁵

A company was the managing agent of another company, which was wound up. A sum of money was paid by

¹ See Commissioner of Income-tax, U. P. v. Basant Rai Takht Singh, A. I. R. 1933 P. C. 181.

² A. I. R. 1931 Pat. 264.

³ Jyoti Prasad Singh Deo Bahadur v. Commissioner of Income-tax, Behar and Orissa, A. I. R. 1931 Pat. 15.

⁴ *In re* Vijaiya Nand Gajpatiraj, 1934 I. T. L. J. page 49; A. I. R. 1934 All. 818.

⁵ Sir Hari Singh Gaur, 3 I. T. C. 35G.

the latter to the former as a compensation for loss of their job as managing agents. It was held that the compensation was taxable as income under this section.¹ But the decision in the above case was doubted by the Privy Council in Messrs. Shaw, Wallace & Co. and it was held that compensation paid for loss of agencies was in respect of a capital asset in the nature of good will and was therefore not income, profits or gains within the meaning of income-tax Act.² Similar views were expressed in Chibbets case where Rowlatt J. remarked "If it was a payment in respect of the termination of their employment, I do not think that is taxable. I do not think that is taxable as a profit. It seems to me that a payment to make up for the cessation for the future of annual taxable profits is not in itself an annual profit at all."³

Capital Expenditure.—See also notes under section 10 supra.

Whether a particular sum received is of the nature of an annual profit or gain or is of a capital nature does not depend upon the language in which the parties have chosen to describe it. It is necessary in each case to examine the circumstances to see what the sum really is, bearing in mind the presumption that—"it cannot be taken that the legislature meant to impose a duty on that which is not profit derived from property but the price of it"

The assessee sold to an oil company all her right, title and interest in and to twenty acres of her land. In consideration of the sale the company agreed to pay to the assessee the

¹ Turner Morris & Co. Ltd. v. The Commissioner of Income-tax, Bengal, 3 I. T. C. 44; 54 Cal. 211.

² 136 I. C. 743.

³ 9 T. C. 48.

sum of £5,000 in cash on the execution of the agreement, to issue to her 25,000 fully paid shares in the company, and further deliver to her order the royalty of 10 per cent. of all the petroleum, natural gas and oil produces and saved from the said lands free of costs. In the year 1927 the company did not deliver to the assessee any of the oil produced, but sold the whole of it, and paid over £9,570.41, being 10 per cent. of the gross proceeds, which sum she accepted in satisfaction of the "royalties" reserved to her under the agreement. The assessee was subsequently assessed to tax in respect of this sum of £9,570.41 which she had received from the oil company :—

Held: that the royalties were in effect payment by instalments of part of the price of the property which the assessee had finally disposed of to the company and hence were not liable to be assessed.¹

Admissible deductions.—See also notes to section 10.

Taxes payable under Act III of 1914 and Act IV of 1920 are not to be deducted from royalty in determining assessable income.²

A road cess or public works cess cannot be deducted.³

The lessee of a mine is, however, entitled to deduct cesses and local taxes from the profits of the mines, as they are payable whether profits are made or not.⁴

¹ Minister of National Revenue v. Catherine Spouser, A. I. R. 1933 P. C. page 211; Goptu Estate Ltd., *in re* A. I. R., 1930 Cal. 1.

² Commissioner of Income-tax, Behar and Orissa v. Shiva Prasad Singh, A. I. R. 1926 Pat. 109; 2 I. T. C. 57.

³ Jyoti Prasad Singh Deo, 6 P. L. J. 62; also Manindra Chandra Nandi, 34 Cal. 257.

⁴ K. M. Selected Coal Co. of Manbhumi, 3 Pat. 295.

Expenses of litigation in a partition case cannot be deducted from the income of the property received on partition.¹

A person cannot claim a deduction of rent by him for a house occupied by him while his own is let out on rent.²

The allowance for any expenditure incurred must be an allowance for expenditure incurred in the year in respect of which arise the income, profits and gains forming the basis of assessment. There is no justification for deducting from the profits and gains something in respect of expenditure, whether it be regarded as capital expenditure or not, which occurred many years before.³

Recurring gifts—From Charities etc.—A clergyman received an annuity on his retirement through ill health out of a charitable fund. The annuity was taxed under Schedule D.⁴

Similarly “an annuity to a wife, payable upon a divorce or under a deed of separation or an annual payment equal to a percentage of gross receipts payable for forty years upon the sale of a secret process” are taxable under Schedule D,⁵ and will be taxed under this section in India.

Income from “other sources.”—Deductions.—The interest paid on money borrowed for the purchase of shares or securities can only be set against the income obtained from the shares or securities where it is

¹, Jag Moban Das, *in re* 112 I. C. 201.

² Wyle, *in re* O. T. C. 128.

³ Commissioner of Income-tax, U. P. v. Basant Rai Takht Singh, A. I. R. 1933, P. C. page 181 ; 7 I. T. L. J. 52.

⁴ See Halsbury's Laws of England, vol. 16, para. 1330, *Duncun's Executors v. Farmer*, 5 Tax Cases 417.

⁵ Halsbury's Laws of England, vol. 16, para 1330.

proved either by a banker's certificate or otherwise that the borrowing has been definitely and solely for that purpose ; but where such proof is afforded, an allowance should be given.¹

Trustees—Income of—The income of a trustee is not an income from profession, trade, or vocation. Nor is it a salary as a trustee has no employer. Such income should be taxed under this section.

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 :

Method of accounting.
P. 50, 51, 65.

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.

Origin and Scope.—In Board of Revenue v. Arunachalam Chetti² it was held by Madras High Court that in section 3 of Act III of 1918 the word "income" meant income actually or constructively received. The use of the word in section 3 of the Act was restrictive and limits any interpretation to be placed upon the following sections of the Act which specified the income liable to tax. Considerable inconvenience would have been caused to assesseees who kept their accounts on mercantile system, as they would have been obliged to recast their accounts on cash basis for income-tax purposes. Sections 3, 4 and 6 to 12 were therefore recast to make it clear that tax is to be levied

¹ I. T. Manual, para 68, page 210.

² I. T. C. 75.

not on actual receipts, but on "income, profits and gains" as defined in those sections. Section 13 makes it clear that no uniform method is prescribed for all assessees.

Method of Accounting.—Owing to a High Court ruling, referred to in paragraph 13, regarding the definition of the word "income" the provisions in the present Act have been so worded as to make it clear that as regards income, profits or gains from business, professional earnings or the other sources mentioned in section 12, no uniform method of accounting is prescribed for all tax-payers, and that every tax-payer may, so far as is possible, adopt such form and system of accounting as is best suited for his purposes. The only restrictions are that the method adopted must be one that clearly reflects the income of the assessee in respect of the fixed period of "the previous year" and that it is the one regularly employed by him for the purposes of his business. If the tax-payer does not regularly employ a method of accounting which clearly reflects his income for the "previous year" the computation will be made in such manner as in the opinion of the Income-tax Officer does clearly reflect it.

There are two main systems of keeping accounts. There is firstly the cash basis system, where a record is kept of actual receipts and actual payments, entries being made only when money is actually collected or disbursed. It is probably unusual for a trader to calculate his profits on this system. If he does so, it must be remembered that the difference between the value of his opening and closing stocks must be taken into account in computing the year's profit, in order to secure a proper and even distribution of his profits over a series of years. There is, secondly, the mercantile accountancy system under which a profit and loss account is maintained and a comparison is made of the value of the stock-in-hand at the beginning and at the end of each year. Under this latter system entries are made in the accounts on the date not of receipt of money or expenditure of money, but on the date of transaction irrespective of the date of payment. When goods are sold, for example, an entry is made at once on the receipt side of the account, although no cash may be received at the time in payment of such goods; and an entry is similarly made on the debt side when a liability is incurred although payment on account of such liability may not be made at the time. It will be the method of accounting adopted for or by the tax-payer, therefore, that will determine the period within which any item of gross

revenue or any deduction therefrom is to be accounted for, and which will determine whether particular allowances are or are not permissible.¹

Where an assessee keeps his books on a cash basis disclosed to the Revenue authorities and the officer accepts that basis, the calculation must be based on actual receipts in the year of computation.²

Under the mercantile system entries are made in the account on the date not of the receipt of money or expenditure of money but on the date of the transaction irrespective of the date of cash payment. A profit and loss account prepared on this basis is accepted as evidence of assessee's income and assessment is made accordingly. Under this system the assessment is made on what may be called book income, the assessee deducts from profits which are book profits from losses which are also book losses in arriving at the taxable income. Since the assessee himself chooses this method he is to be assessed on this method.³ It is open to the assessee to adopt any method he likes.⁴

The finding that the accounts are maintained on mercantile system is a question of fact and the only question of law that may arise for judicial determination in this connection is, whether such a finding could legitimately be arrived

¹ Income-tax Manual, para 50, pages 194-195.

² Ratan Chand Lala Mal v. Commissioner of Income tax, U. P., 1936 I. T. L. J. page 67.

³ Ahmad Din Alla Ditta v. Commissioner of Income tax, Punjab, 8 I. T. L. J. 193 (1934); 7 I. T. C., page 32; Mian Feroze Shah v. The Commissioner of Income-tax, Punjab, 4 I. T. C. 315; 7 I. T. L. J. page 56 P. C.; A. I. R. 1930 page 197; V. S. U. R. Firm v. Commissioner of Income-tax, Burma, 9 I. T. L. J. page 176 (1935); Siva Prasad Gupta v. Commissioner of Income-tax, 3 I. T. C. 4062.

⁴ Subramanian Chatteyar, A. I. R. 1927 Mad. 841 F. B.

at on evidence or whether the finding is based on no evidence.¹

The facts of Mian Feroze Shah's case cited above are as follows :—

“ The appellant, the assessee, is a timber merchant carrying on business at Nowshera, in the North-West Frontier Province. His present complaint is with reference to the profits of his business assessable to income-tax for the year ending the 31st March, 1928. As has been seen, the effect of sec. 3 of the Income-tax Act is that the profits of the previous year are for the purpose of income-tax to be taken to be the profits of the year of assessment. Accordingly, in response to a notice from the Income-tax Officer, pursuant to sec. 22(2) of the Act, served upon the appellant with reference to the year of assessment, he made a return which showed his total income received during the previous year to have been Rs. 9,167. The Officer refused to accept this return, and to test its accuracy called, under section 23 (2), for evidence in its support. In response, the appellant's business books were produced. From them it appeared that his sales of timber therein recorded for the year in question produced Rs. 4,37,339 only, there having been omitted all record of some further sales actually effected during the year for an aggregate purchase price of Rs. 90,618. These further sales, although so effected, were not brought into charge until the month of April 1927, after the expiration, that is to say, of the previous year. With these sales included in that year as the Income-tax Officer held they ought to have been, the appellant's total sales for the year amounted to Rs. 5,27,958, and on the basis of that figure of sales the officer assessed the appellant to income-tax in respect of his business profit. Here, according to the appellant, the officer went wrong. The sum of Rs. 4,37,339, representing the sales recorded in his books for the year, was the only true basis of assessment, and the addition of Rs. 90,618 to that sum is the first of the two matters to which he takes exception.

Dissatisfied with the assessment upon him, the appellant, under section 30 of the Act, appealed to the Assistant Commissioner of Income-

¹ Feroze Shab v. The Commissioner of Income-tax, Punjab, 4 I. T. C. 315 ; 7 I. T. L. J. page 56 P. C.

tax, Rawalpindi. His grounds of appeal in effect, were (1) that according to his method of bookkeeping, a transaction of sale was not entered in his book until the day when the Hundi in respect of it was received from his purchaser, and that the Hundis for the Rs. 90,618 were received in, that is, were not received before April, 1927, and (2) that the officer was not correct in working out the profits at a flat rate of so much as $32\frac{1}{2}$ per cent. The Assistant Commissioner dismissed the appeal by an order dated the 22nd November, 1927. In his view, as in that of the Income-tax Officer, the appellant's books were normally kept on a system, which he termed the mercantile system, an outstanding feature of which is that sales are recorded on the date when they are effected, whether cash payment is then made or not. In respect of the Rs. 90,618, the appellant had for his own purposes departed from this system, and had recorded the transactions not on the dates when the sales were effected, but on a date after cash payment for all of them had been received."

In the case of V. S. U. R. Firm the facts were as follows :—

"In the present case however the assessee according to the custom of the Chettyar community to which he belongs has always been treating interest included in the fresh pronote or mortgage bond taken in a settlement of accounts to cover outstanding principal and interest as realized, and there has been no objection thereto for the last so many years. Further, the amount is shown in the assessee's books as interest realized both in the interest account and in the accounts of the debtors. This method of accounting has been regularly employed by the assessee as well as other members of his community and under section 13. I am bound to compute income, profits and gains in accordance with the method of accounting regularly employed by the assessee, and to allow the assessee to exclude the sum of Rs. 23,373-9-0 would be allowing him to change the method of accounting hitherto adopted and thereby not properly deduce the income, profits and gains therefrom. It is also to be noted that the debtors in giving fresh pronotes for the principal and interest already due have capitalized the amount due to the assessee and thereby undertaken to pay interest on the capitalized amounts and that a fresh contract has been entered in place of the old."

"What the officer is directed to compute is not the assessee's receipts but the assessee's income, and in dubio what the assessee himself chooses

to treat as income may well be taken to be income and to arise when he so chooses to treat it."

"Although book entries purporting to relate to the receipt of income are not necessarily conclusive as to the quantum of the income to which they purport to refer, the real income, profits and gains that have accrued during each accounting year are in every case to be determined by the income-tax officer as a matter of fact."

Where an assessee elects to treat the interest due under the original loans as having been received and paid on the execution and delivery of fresh promissory notes by the debtors, the interest is liable to assessment.¹

Where a new promissory note is executed in respect of interest due under the old loan and interest is treated by the assessee in his accounts as having been received, the amount of interest so shown in the accounts is liable to assessment.²

Regularly employed.—The method of accounting regularly employed by an assessee for the purposes of his business should, so far as possible, be the method adopted for working out his profits for income-tax purposes; but the Income-tax Officer has to decide whether that method of accounting is the one regularly employed for the purposes of the assessee's business and whether it is such as to reflect clearly the taxable profits for the "previous year." In most cases this should cause no difficulty. Doubtful cases should be referred to higher authorities. As an example of the principles to be followed in settling doubtful cases two instances of such cases are given. It is the practice amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of transactions between themselves and members of their own community, but on the basis of cash payments in the case of transactions between themselves and their customers. Provided that the same system is continuously employed, there appears to be no reason why this particular

¹ V. S. U. R. Firm v. Commissioner of Income-tax, Burma, 1935 I. T. L. J. page 176.

² M. A. L. Chettyar Firm v. Commissioner of Income tax, Burma, 1935 I. T. L. J. page 205.

practice should not be considered to be a "method of accounting regularly employed." Again there are cases where the various branches of a business are only closed once in three or five years and where the accounts of the branches are not annually incorporated in the headquarters business's accounts. In such a case it might be possible to assess either on the average annual profits of the branches as disclosed by the accounts last filed or on the actual profits brought to account owing to particular branches closing in particular years.

The cases in which an assessee desires to change his accounting system should be rare and where such a request is made, the Income-tax Officer in considering it should, as in the similar case of a demand for a change in the "previous year" (paragraph 6), if he is prepared to allow the change, take steps to secure that no profits escape taxation on account of the change. While section 13 leaves it to the discretion of the Income-tax Officer to decide whether a particular system of accounting should be accepted or whether a change in the system of accounting should be allowed, the discretion of the Income-tax Officer in this matter can be questioned in the course of an appeal against an assessment under section 30, *i.e.*, it may be made one of the grounds of appeal in contesting the assessment of the profits.¹

The assessee is not entitled to alter his system of accountancy in any particular year to the detriment of revenue.²

Mercantile system of Accountancy and Foreign business.—Where an assessee who kept his accounts on mercantile system, carried on business in British India (Burma) (Penang) and also carries on business in a foreign country, and credited the income of foreign business in his account books in British India he was not allowed to plead that income credited in British Indian books was really income earned outside British India and was foreign income, and that the crediting of such income in British Indian

¹ Para 51, Income-tax Manual, page 196.

² *Foster v. Commissioner of Income-tax, Burma*, 3 I. T. C. 435.

books was only a book entry. The income credited in British Indian books was held to be income accruing or arising within British India.

Beasley J. remarked:

"This interest is not a profit or gain arising without British India. The Income-tax Commissioner does not seek to tax anything that (the Rs. 78,768) may have earned in Penang. What he has done is to assess the profits of the Rangoon business under section 10 of the Indian Income-tax Act computed in the manner directed by section 13 of the same Act. Section 13 was no doubt introduced to obviate many difficulties. It is a great advantage to both traders and Income-tax Officers. It is open to a trader to adopt either the mercantile basis of accounting or the cash basis. He is not forced to adopt one in preference to the other but he cannot adopt both. The assessee in common with most of the business firms in India has chosen to adopt the mercantile basis of accountancy and not the cash basis. He cannot for the purpose of more conveniently carrying on his own business adopt the mercantile basis and then for the purpose of income-tax assessment adopt the cash basis. What is done in accordance with the mercantile basis is that the debit entries made on account of interest due by the assessee to his creditors in foreign places are treated as payments of interest though interest has not actually been paid and such debits are allowed as an expenditure in computing the profits of the assessee's business in British India. Similarly credit entries made on account of interest due by creditors in foreign places to the assessee are treated as payments of interest though that interest has not actually been paid and admittedly in this case this basis has been adopted and no question as to whether or not interest has actually been received or has actually been paid can under this basis possibly arise. What the assessee seeks to do is whilst adopting the mercantile basis in regard to all the other entries of interest in his accounts to adopt an entirely different basis, *i.e.*, cash basis for the purpose of this one entry and to argue that interest has never been received in British India although it is entered as a profit in exactly the same way as all the other credits of interest are, all the other entries being treated on the mercantile basis as money actually received. The assessee has chosen to adopt the mercantile basis. His own accounts are dead against him and in our view preclude him from arguing here, as he does, that this interest is income arising outside British India, and not

received in British India, because in law the transfer called in the assessee's books an advance to the Penang firm cannot be a loan. In our view once an assessee has adopted the mercantile basis of accountancy it is upon that basis and upon that basis alone that he is to be assessed. It would be an impossible position if an assessee after having adopted the mercantile basis were to call upon the Income-tax Officer to make a long and difficult inquiry with regard to the various items entered as profits in the accounts of the assessee in order to prove that those sums were actually received in British India. This interest is treated like all the other interest in the assessee's books as a receipt of profit. The money transferred is treated as an advance. The interest is treated as interest on that advance in just the same way as all the other interest is treated as interest on loans made to others. Not only that, interest chittas were actually sent to Penang in respect of this interest. The case of the Gresham Life Insurance Society v. Bishop was referred to by the assessee as a case in support of his contention. But that case has no application to this case as that was a case of a foreign income, whereas in this case on the facts, that is to say, the mercantile basis of accountancy voluntarily adopted by the assessee, the interest is income which properly arises under section 4, sub-section (1) of the Indian Income-tax Act."¹

Valuation of Stock and Mercantile system of accountancy.—In mercantile system of accountancy the proper valuation of the closing as well as of opening of stock is a necessary element of the correct estimate of income. "Trading stock-in-hand" means stock in which property has passed to the assessee or which is in his actual control or possession.² When the opening and closing stock of a business are both undervalued, the real profits of a particular year cannot be ascertained by merely raising the valuation of the closing stock without taking into consideration the similar under-

¹ A. T. K. P. L. S. P. Subramanyam v. Commissioner of Income-tax, Madras.

² Green and Co. v. Commissioner of Inland Revenue, 6 A. T. C. 64.

valuation of the opening stock.¹ Both errors should be corrected in order to make a correct estimate of income.²

Method of valuing stock for one year cannot be changed in taking stock value of the stock for the succeeding year. Where the assessee valued the closing stock on hand at market price which was considerably lower than cost price and were declared not liable to tax, but valued the closing stock at the cost price in the succeeding year and again showed a loss, it was held that the assessees having elected in the previous year to value their stock at the market rate were not entitled in the succeeding year to revert to the purchase price as representing the value of the opening stock, but must value them at the lower market value fixed by them for the valuation of the closing stock in the previous year.³

It seems that it is open to the assessee to value the closing stock either at cost price or at the market rate at the time of valuation of the stock, provided that the same method is consistently followed and there is no attempt at concealment of income.⁴

Lord Buckmaster said :

“ If the method of altering both valuations is not adopted it is perfectly plain that the profit which is brought forward is not the real one.

¹ Commissioner of Income-tax, Bombay v. Ahmedabad N. Cotton Mills Co Ltd, A. I. R. 1930, 56 P. C. ; 1930 A. L. J. 76.

² Commissioner of Income-tax v. Ahmedabad Cotton Mills, A. I. R. 1928 Bom. 510.

³ Commissioner of Income-tax v. Chengalvarya, A. I. R. 1925 Mad. 1242 ; 2 I. T. C. 14 ; 48 Mad. 836.

⁴ Commissioner of Income-tax v. Bansi Lal Abirchand, A. I. R. 1923 Nag. 102.

It may be more or it may be less, but it has no relation to the true profit if the stock is valued on one basis when it goes out without considering the value of the stock when it comes in. When, therefore, there is undervaluation at one end, the effect is to cause both a smaller debit in respect of the stock introduced into the next account and a larger sum for profits realized by the sale, change in market values being immediately reflected in the price obtained for the goods that are sold; in these circumstances to contend that there should be undervaluation at one end and not at the other is to raise an argument which their Lordships cannot accept.”¹

Stock Jobbing Business—Valuation.—The assessee who carried on business as a stock jobber and dealer in various kinds of goods, but did not close accounts in each line of business annually, but carried on the whole thing as a book balance, the final gains or loss being ascertained at the end of the period when the transaction in the line of business ceased. It was held that the assessee was entitled to claim a set-off for losses on any particular transaction when the same was closed, in the year in which it was in fact closed on the basis of the special method of accountancy adopted by him.

Findlay, Judicial Commissioner and Predeaux, Additional Judicial Commissioner said :

“For our own part, we are wholly unable to see why the non-applicant should not be allowed to claim the losses in question under the system of account adopted by him. If that system of account is considered by the Income-tax Officer as an unsuitable or an improper one, he can issue specific orders in the matter under the proviso to section 15, but until he has done so, we are of opinion that the system of account adopted by the non-applicant should, in the meanwhile, have been accepted for the purpose of assessment of income-tax in the year under assessment. It seems obvious that whether the book system of account adopted by the non-applicant is a desirable one or not, no profits can eventually escape taxation

¹ Commissioner of Income-tax, Bombay v. Ahmedabad, N. Cotton Mills Ltd., A. I. R. 1930, 56 P. C.

thereunder, although possibly the Income-tax Authorities might in any particular case have to wait a long time before receiving profits It has been urged on behalf of the non-applicant that the proper procedure for the Commissioner was, under the proviso to section 13 of the Income-tax Act, to have given the non-applicant due notice that, in his opinion, the income could not be properly deduced from the method of accounting employed and that different method of accounting would have to be adopted. It has been urged in this connection that a question of estoppel arises and, while we are of opinion that there is no question of the doctrine of estoppel as a mere rule of evidence applying, it does seem to us that the doctrine of equitable estoppel necessarily arises in the circumstances of the case. The Commissioner of Income-tax has for other purposes, viz.: The Hukamchand Mills and Birla Jute Mills, accepted, for purposes of estimation of profits, precisely the same system of accounting which he now objects to when, as in the case of New Great Eastern Mill shares, a loss has occurred. This position seems to us contrary to the most elementary principles of justice and equity and, in reality, amounts to saying that an assessee's income in any given year is what he has made out of a profitable branch of business but that, at the same time, any loss made in another absolutely analogous branch of his business should not be taken into account in determining what his assessable income is.

We see, moreover, that considerable difficulty is likely to arise in the method of accounting which the Commissioner of Income-tax considers should have been adopted by the assessee. He apparently desires the assessee in each year to estimate his losses on the stock of shares in question. Any such system, it seems to us, might prove a highly unsatisfactory one. The market price of shares on the stock-exchange vary immensely even from day to day and any such system based on the idea of arbitrarily closing accounts on a certain date might prove a highly artificial and unsatisfactory one. Under the applicant's system of keeping account, assuming it to be carried out in a businesslike, thorough and straightforward fashion, it seems to us inevitable that actual losses or gains as regards the stock or shares in question over the whole set of transaction connected therewith will be definitely known when the transactions in these have ceased for good and all.....Unless and until, therefore, the Commissioner of Income-tax sees cause to insist under section 13 of the Indian Income-tax Act on the assessee employing another method of accounting, we are

of opinion that, having regard to the provisions of section 24 of the Indian Income tax Act, the assessee was entitled to claim a debit for the loss incurred on these New Great Eastern Mill shares. As we have pointed out, it is clear that in connection with other shares the Commissioner accepted this method for the purpose of calculation of gains, and the principle laid down by Coutts-Trotter C. J. and Krishnan J. in *Chengalvaraya Chetti v. Commissioner of Income-tax, Madras*, seems to us to be fully applicable to the present case : cf. also *Subramaniam Chettiar v. Commissioner of Income-tax, Madras*. *Bansilal Abirchand v. Commissioner of Income-tax, Central Provinces and Berar*.

Nathukotai Chetti Firms.—The method of accounting adopted by Nathukotai Chetti firms is what is called the “combined basis,” i.e., partly cash and partly mercantile or accrued basis. All transactions with non-Chettis are recorded on cash basis system, while transactions with Chettis are recorded on mercantile system. One feature of this system is the deposits known by the name of Tawani deposits. In Tawani deposits, accrued interest, if not demanded by the creditor, is added to the principal lent and begins to bear interest. Such interest becomes income according to the system of accountancy peculiar to Chettis. Interest is shown as charged between the Head Office and the various branches, but is in fact never charged, interest is made up only for the purpose of arriving at the commission, which, at the end of each agency, is payable to the agents. Where interest is charged to, and paid by the branches, such interest is chargeable to income-tax.¹

Decision of method of accounting.—The income-tax officer should be governed in his procedure by judicial considerations. He should base his assessment on legal and

¹ *Somasasundaram Chettiar v. Commissioner of Income-tax, Burma*, 2 I. T. C. 61.

not mere hearsay evidence which may be the evidence of his officers or members of the public, but without evidence to the effect that those items which do not appear in an account should find a place therein he is not entitled to assume on mere general hearsay that those items should appear in the accounts. Should he however find on good evidence that even one substantial item is missing, he would be entitled to treat the whole accounts as unreliable.¹ The Income-tax Officer is the sole judge of the question of the possibility of deducting the income, profits, and gains from the method of accountancy employed by the assessee.² The Income-tax Officer is empowered to disregard the assessee's method of accounting. But his decision is open to appeal.³

No random assessment.—The Income-tax Officer is not justified in making a random assessment. This section does not justify a wholly arbitrary estimate. For instance, the taxing officer cannot say "I think the income from interest is Rs. 10,000" without showing the basis of his opinion, e.g., that the figure loaned was so much or that amount had been earned in the previous year as interest and there is nothing to show that it has diminished. When a return is furnished and accounts are put in, in support of that return, they should be taken as the basis for assessment. The accounts should not be rejected simply because they are complicated. Strictly regular accounts

¹ *Brij Nath v. Commissioner of Income-tax*, A. I. R. 1926 Lah. 233.

² *In re Firm Gokul Chand*, 94 I. C. 128.

³ *The Commissioner of Income-tax, Bebar and Omesa v. Kameshwar Singh*, 7 I. T. L. J. 29 P.C., A. I. R. 1933 P. C. 108.

are not always available specially in the case of petty traders with only a poor knowledge of accounts.¹

A finding as to system of accountancy—a question of fact.—A finding as to the assessee's system of accountancy is a finding of fact and does not raise a question of law. Where the finding of the Income-tax Officer is that the assessee's system of accounting required a certain sum of money excluded by the assessee from the accounting in the assessment year to be included in his account of that year, the only question open to judicial determination is whether there was evidence before these officers upon which they might so find.² The question whether the accounts are maintained in such a way that they indicate the true income of the assessee is question of fact.³

Flat Rate.—The findings of the Income-tax Officer as to the assessee's system of accounting is a question of fact, and if such a finding is based on evidence, no question of law arises. Where the principle of assessment at a flat rate is not contested, its amount must be for the income-tax officer to determine.⁴

Duni Chand Dhani Ram v. Commissioner of Income-tax, Punjab, 7 Lahore 207; A. I. R. 1926 Lahore 161; 1930 A. L. J. 1548; A. I. R. 1931 All. 23.

² *Mian Feroze Shah v. Commissioner of Income-tax, Punjab, 7 I. T. L. J. page 56 P. C.; A. I. R. 1933 page 193 P. C.*

Diwan Chand Kabani v. Commissioner of Income-tax, Punjab, 8 I. T. L. J. page 205; 7 I. T. C. 358, A. I. R. 1932 Lahore; Commissioner of Income-tax v. C. T. V. S. Chettyar Firm, A. I. R. 1929 Rang. 248 F. B.; A. I. R. 1933 P. C. 108.

Mian Feroze Shah v. Commissioner of Income-tax, Punjab, A. I. R. 1933 P. C. page 198; 7 I. T. L. J. page 56 P. C.

Equitable Estoppel.—Until the Income-tax Officer acts under the proviso to section 13, and disapproves of the assessee's system of accountancy as an unsuitable and improper one from which income, profits, and gains cannot be correctly ascertained, and directs the adoption of a different method, the assessee is entitled to be taxed on his own peculiar method of accountancy. Where the method of the assessee is accepted by the income-tax officer in one transaction, he cannot object to the same method being adopted in other similar transaction.¹

Book Debts.—If an assessee has been assessed to tax in respect of book debts owing to him in one year, he cannot be again taxed on the same amount after it is received in cash in another year.²

Where the computation of income, profits and gains for a particular year, has been made under section 13 on such basis and in such manner as the Income-tax Officer has determined, the assessee is entitled to show that the income, profits and gains included in the assessment of a subsequent year were included in that computation, and it is a question of fact to be decided by evidence in each particular case.³

Unadjusted Interest.—The general rule of law is that when a debtor pays money to a creditor without specifying whether it is a payment towards the principal or towards interest, the creditor is entitled to appropriate the money towards the interest due at the date of payment, and it is

¹ *Barshi Lal Abir Chand v. Commissioner of Income-tax, Nagpore*, A. I. R. 1928 Nag. 102.

² *Commissioner of Income-tax, Madras v. Mutha Sarvarayudu*, 2 I. T. C. 208.

³ *Commissioner of Income-tax v. C. T. V. S. Chettiyar Firm*, A. I. R. 1929 Rang. 248; 4 I. T. C. 160.

only after the interest is satisfied that the money paid can be appropriated towards the payment of the capital.¹

Where interest is outstanding on a principal sum due and the creditor receives an open payment without any appropriation of the payment as between capital and interest by either creditor or debtor, the presumption is that the payment is attributable in the first instance towards the outstanding interest. Where the Income-tax Officer finds that the assessee has received certain sums from the debtor but has not till then credited himself as having received any interest, he is entitled to treat the sum received as applicable to the outstanding interest and to treat it to that extent as income of the assessee in the year of payment.²

The same principle applies in case of mortgage debts.³

Interest—added to principal.—It was held under the Act of 1918 that where compound interest is payable to a creditor and is added periodically to the principal, but no payment is made either in cash or by credit in the debtor's accounts, such interest is not taxable.⁴ These decisions were given before the enactment of the present section 13. Under

¹ Venkatadri Appa Rao v. Parthasasthi, Appa Rao, 44 Mad. 570 P. C. ; Ramalingam Chettiar v. Subramanayair Chettiar, 30 Mad. 614.

² Commissioner of Income-tax, Behar and Orissa v. Kameshwar Singh, 7 I. T. L. J. page 29 ; A. I. R. 1929 Pat. 318 ; Maharaja of Darbhanga v. Commissioner of Income-tax, A. I. R. 1930 Pat. 81 ; 4 I.T.C. 283.

³ Ramchand v. Bank of Upper India Ltd, Simla, A. I. R. 1928 Lahore 901.

⁴ Chief Commissioner of Income-tax, Madras v. Pydah Venkata Chalapathy Garu, 1 I. T. C. 185 ; A. I. R. 1922 Mad. 405 ; Arunchalam Chettiar, 1 I. T. C. 75 ; 44 Mad. 65 ; Raghunandan Prasad Singh, 9 Pat. 48.

this section if the assessee adopts the mercantile system of accounting and debits to the debtor the amount due from him but not actually paid by him, and credits that sum to him, he is liable to pay tax on that sum.¹

Payment in kind.—A liability to pay interest, like liability to make any other payment, may be satisfied by a transference of assets other than cash and a receipt in kind may be taxable income. But for this, it is essential that what is received in kind should be the equivalent in cash or, in other words, should be money's worth. A debtor who gives his creditor a promissory note for the sums he owes can in no sense be said to pay his creditor, he merely gives his document or voucher of debt possessing certain legal attributes. But where the assessee treats such a promote as income by crediting the money as realized he will be taxed. What the Income-tax Officer is directed to compute is not the assessee's receipts but his income and in dubio what the assessee himself chooses to treat as income may well be taken to be income and to arise when he so chooses to treat it.

Similarly, where a mortgagee purchases the property which was the subject of mortgage, he can be said to have received the equivalent of the interest on his mortgage.² On the same principle it has been held that where assessee who carry on a moneylending business are compelled to take over lands and other immoveable property in liquidation of debts due to them they are entitled for the purposes of

¹ Subramanian Chettiar, 50 Mad. 765; A. I. R. 1927 Mad. 841; 2 I. T. C. 365; A. V S. U. R. Firm v. Commissioner of Income-tax, Burma, 9 I. T. L. J. page 176.

² The Commissioner of Income-tax v. Kamehswar Singh, 7 I.T.L.J. pages 29, 30; A. I. R. 1933 P. C. 108; 1933 A. L. J. 527 P. C.

income-tax assessment to claim a loss by revaluation of land at an estimated real value.¹

Bad Debts.—It has been shown above that it is the method of accountancy adopted by the taxpayer, that determines the period within which any gross revenue or any deduction therefrom is to be determined.

It is for this reason that the Act does not contain a complete statement of the deductions or allowances that are permissible or not permissible in working out business profits or professional earnings, since certain allowances or deductions can only occur where the mercantile accountancy system is adopted. There can, for example, be no allowance for "bad debts" where the cash basis is the method of accountancy employed. Under the mercantile accountancy system, as noted above, an entry is made on the receipt side when a sale is concluded, although the money on account of such a sale has not been paid and in making up the accounts at the end of the year such entries are treated as receipts, and the tax is levied on these "book profits." It may happen that some of these "book profits" cannot be recovered; they are written off as "bad debts" when found to be irrecoverable; and since such "book profits" have been included in the income assessed to income-tax, the "bad debts" must be written off against the "book profits" in the year in which they are written off in the accounts as irrecoverable. Where the cash system is adopted, there can be no "bad debts."

A bad debt or irrecoverable loan cannot be allowed as a deduction unless :—

- (a) the assessee has written it off his accounts,
- (b) it has actually become bad or irrecoverable, and
- (c) it actually became so in the "previous year."

The word "irrecoverable" in the term "irrecoverable loan" should be given a wider sense than its technical legal meaning.

The fact that a loan or other debt has become legally "irrecoverable" is not conclusive evidence that it is actually irrecoverable or "bad." But

¹ Commissioner of Income-tax, Burma, P. L. S. M. Concern Minhla, 9 I. T. L. J. 171; A. I. R. 34 Rang. 274.

a loan or other debt that has become legally irrecoverable should ordinarily be treated as actually irrecoverable or "bad," unless the assessee proves it to be otherwise.

The contention often put forward by assessees, or their representatives that if a debt or loan is written off it can no longer be recovered by suit, should not be admitted because a creditor who has written off a debt or loan in his accounts as bad or irrecoverable is not in any way debarred from suing for its recovery unless the act of writing off is communicated to the debtor or it is agreed between the creditor and debtor that a certain amount shall be paid and accepted in full satisfaction.

Again, it will be the method of accounting that will determine the particular year in which allowances common to both systems of keeping accounts may be made. In sub-section (2) of section 10 of the Act provision is made for allowances on account of rent paid, interest paid on capital borrowed, the amount of premium paid in respect of certain classes of insurance, amount paid on account of current repairs, etc., and sub-section (3) of section 10 states that the word "paid" means "actually paid" or "incurred" according to the method of accounting upon the basis of which profits or gains are computed, i.e., where the cash basis is adopted, it will be the date of actual payment that will determine the year in which such allowances may be made, whereas if the mercantile accountancy system is adopted, the allowances can be claimed in the year in which the liability to pay accrued.¹

Where an assessee claims an allowance in respect of bad debts, he has to prove to the satisfaction of the Income-tax Officer that the debt became bad within the year of assessment. The provision regarding the allowance of bad debts should not be allowed to become a means for assessees to defraud the revenue by treating sums which have really become bad years before, as bad debts in the year of assessment and in this way to reduce to that extent the income available for being taxed. It has been laid down

¹ Income-tax Manual, para 50 (iii)—(viii), pages 195-196.

that "in the absence of any legislation to that effect an Income-tax Officer cannot dictate to the assessee that he must write off a certain amount due to him after the lapse of prescribed period of limitation. Nor he can lay down that in a given set of circumstances the assessee will show the amount as outstanding at his own risk, since it will no longer give him any right to set-off as bad against his profits."

A debt may become irrecoverable under the law now in force by reason of the lapse of the period of limitation but the debt exists all the same, and if a person chooses to pay a time-barred debt in the manner permitted by section 25 of Contract Act, the debt which he chooses to pay remains the same debt, though by reason of the contract which he enters into, it assumes a new garb and gains a fresh vitality.

Sometimes it may happen that when a loan is taken by debtor he may be quite solvent and the creditor may entertain no doubt as to his ability to pay. In the next year of the advance, and, perhaps, several years before the due date, he may become involved in a financial crisis, for which he is not responsible, as a result of the bank or firm, with which he may have been crediting his surplus money, failing. There may thus be no prospect in that year, or in the near future, of any recovery from such a debtor. If as argued on behalf of the Crown this creditor were to make it his practice to debit as bad or irrecoverable debt, every loan or its balance on the expiry of three years from its due date, and not earlier, how and when is he to debit the amount of the debt to the Kasar Khata although he is quite satisfied as to the debtor's inability to liquidate it. Is he to wait until the whole debt falls due, and also for a period of three years thereafter, to

become entitled to debit the said debt as a bad debt for purposes of income-tax? Or, should he debit it in the year in which the debtor's liability to pay became clear to his mind? The Income-tax Department might in the latter case come down on him for having departed from his system of book-keeping and may therefore disallow that debit. It is no use multiplying instances to expose the absurdity of the contention. Several anomalous results will follow, if the assessee's direction or election in the matter of the choice of the proper time to write off a debt advanced by him as a bad or irrecoverable debt were allowed to be overridden by the taxing officer's decision in this way.

The assessee must for obvious reasons be the sole arbiter of his own rights and privileges as regards the business he conducts in his own interest. What is to his interest, and what is prejudicial to him, must depend upon his own decision. It, therefore, follows that, on the question whether to treat any particular debt as bad or irrecoverable, his word or decision must be final for he alone is or can be the judge of the risks, chances and circumstances which may effect the recovery or non-recovery of that debt from his debtor.....A reference to Lord Halsbury's Laws of England, vol. 16, para. 1310, dealing with the subject of income-tax, shows that in England no deduction is allowable "for any debts except bad debts proved to be such to the satisfaction of the Commissioners." I do not find such a prohibition either in sec. 10 or sec. 24 or anywhere else in the Indian Income-tax Act of 1922. In the absence of words "proved to be such to the satisfaction of the Commissioners," I am inclined to take the view that bad debts are deductible from business profits at the option of the assessee; the deduction need not be of only such as are proved to the satisfaction of the income-tax authorities to be bad debts. I do not find

any restriction in the Indian Statute as to the year in which the bad debts could be deducted by assessee. In the absence of words in the statute restricting the assessee's option, and prescribing, the time for writing them off, or, the quantum of proof requires as a condition precedent, for doing so, or imposing the condition that the income-tax authority should be consulted before writing them off, I think the assessee's right to debit the loss sustained on account of bad debts written off by him, against the profits or gains of any year, must be held to be unqualified and absolute, as regards the amount to be debited and the choice of time at which to write it off. His decision to write bad debts off the account cannot be regarded as conditional upon his proving them to be bad debts to the satisfaction of the income-tax authorities, as is the case under English Statute."¹ Similar views were expressed in another case by the Punjab High Court where a debt due from a debtor who had become insolvent two years before the debt was written off as a bad debt, was allowed. Motisagai J. said :

"In *R. S. Lal Puran Mal v. The Commissioner of Income-tax, Punjab*, where the assessee who kept his accounts partly upon the cash basis system and partly upon the mercantile basis system, claimed a deduction in respect of a sum of money written off in the year of account as irrecoverable from his debtor who had become an insolvent over two years ago and the claim was disallowed by the Income-tax Officer, Martineau and Abdul Raof JJ. of the Lahore High Court held that it lay upon the assessee to prove by evidence to the satisfaction of the Income-tax Officer that the debt became irrecoverable in the particular year in which the deduction was claimed."

Motisager J. said :

"In my opinion the only person, who can say with some degree of certainty as to when did a particular debt become irrecoverable,

¹ *Commissioner of Income-tax, Nagpur v. Chitnavis*, A. I. R. 1929 Nag, 50 ; 3 I. T. C. 321.

is the person to whom the debt was actually due, and not a third party who did not know anything about the transaction..... I do not think that in the present case, the Income-tax Officer who did not know anything about the circumstances of the debtor and who made no enquiries into the matter, could be a proper judge of the question whether the debt became irrecoverable in the year in which the debtor was declared an insolvent or in the year in which the assessee wrote off in their books, I would, therefore, hold that the Income-tax Officer had no discretion to disallow the deduction claimed by the assessee."

The Allahabad High Court has held that it is unjust that in treating the book income as the actual income, the losses, which would have been deducted if the book income had been treated as the actual income in a particular year of the assessee, should not be deducted. That being so the assessee is entitled to deduct from his estimated income the actual losses that may have been suffered in a particular year and the amount of irrecoverable debts that should have been discovered and could have been discovered in a particular year.¹

In a recent case it has been held by the High Court of Bombay that the Commissioner has no arbitrary power to say that a bad debt should be written off in any particular year, but the Commissioner or Assistant Commissioner has to hear the evidence in each case. A loan incurred 12 years before the year of assessment due from a debtor who had become insolvent 5 years before the year of assessment was not allowed to be treated as a bad debt under the year of assessment. It was remarked that a bad debt should be written off within a reasonable time.² The Privy Council

¹ Shiva Prasad Gupta v. Commissioner of Income-tax, U. P., A. I. R. 1929 All. 820; 3 I. T. C. 406.

² Vallabhdas Murlidhar v. Commissioner of Income-tax, Bombay, A. I. R. 1930 Bom. 201; 4 I. T. C. 318.

has now held that "the question whether a debt is a bad debt and when it becomes bad are questions of fact to be determined in case of dispute, not by assessee alone, but by the appropriate tribunal upon a consideration of all relevant and admissible evidence."¹ But the decision of the Income-tax Commissioner on the question whether a debt is bad or irrecoverable operates only for the particular year under assessment and it would be open to the assessee to repeat his claim in respect of any particular debt in any subsequent year provided the debt had not been recovered in the interval.²

Forward Business.—A business which is in its nature by way of forward contract cannot be taxed on estimate.³

Consignment Account.—It all depends on how the concern keeps the accounts. If it keeps suspense accounts for each consignment or 'venture' till it is closed, it follows that until the profit is transferred from 'suspense' to 'profit and loss' no income arises for taxation. Otherwise the Income-tax Officer would have no option except to take the net balance of the consignment account, or estimate it as best as he can under section 23 (3) and section 13, unless as a result of some default on the part of the assessee, he bases the assessment on section 23 (4).

Proviso.—Two conditions have to be fulfilled before the Income-tax Officer can apply the proviso. Either no

¹ Commissioner of Income-tax, C. P. and Berar v. Chitnavis, 7 I. T. L. J. 8 P.C.; A. I. R. 1932 P. C. page 178.

² Rallia Mal Rannak Ram v. Commissioner of Income-tax, Punjab, 8 I. T. L. J. page 210 at 211.

³ Jugal Kishore Mukatlal v. Commissioner of Income-tax, U. P., 6 I. T. C. 185.

method of accounting should have been regularly employed, or the method of accounting is such that in the opinion of the Income-tax Officer, income, profits, and gains cannot be properly deduced from them.¹

If the system of accounting adopted by the assessee is deemed unsatisfactory, the Income-tax Officer should pass specific orders under the proviso, but until this is done, the system of accounting adopted by the assessee must be accepted.²

If the Income-tax Officer accepted the method of accounting adopted by the assessee in certain transactions, but objected to it in other transaction of a similar nature, it was held that as a mere rule of evidence the Income-tax Officer should accept the system for all analogous transactions.³

Where a method of accounting, though perhaps not a normal one, has been regularly employed by the assessee himself from which the profit of the business can properly be and has been deduced, the proviso to section 13, does not apply.⁴

¹ Kesari Das & Sons v. Commissioner of Income-tax, Punjab, A. I. R. 1926 Lahore 201; 2 I. T. C. 213; Feroze Shah v. Commissioner of Income-tax, Punjab, A. I. R. 1930 Lah. 197.

² Commissioner of Income-tax, Nagpur v. Bansi Lal Abirchand, A. I. R. 1928 Nag 102; 3 I. T. C. 57.

³ *In re* Bansi Lal Abir Chand, 3 I. T. C. 57; Chengal Varata Chetty, A. I. R. 1925 Mad. 1242; 2 I. T. C. 14; Subramanian Chettiar, 57 Mad. 765.

⁴ Dhakshewar Prasad Narain Singh of Amawan v. Commissioner of Income-tax, Bihar and Orissa, 1936 I. T. L. J. page 98.

Where the assessee has regularly employed one method of accounting, the first part of the proviso does not come into operation.¹

Where the Income-tax Officer believes that the accounts produced by the assessee are not genuine he can discard them and is at liberty to adopt his own method of assessment.²

Where the Income-tax Officer is compelled to act under the proviso to section 13, he is the sole arbiter on the question of the possibility of deducing the income, profits, and gains of the assessee from the method of accounting employed by him. The correctness of the opinion of the officer under such circumstances is a question of fact.³ Though the question whether the evidence tendered before the authorities established that the method of accounting employed by the assessee was such that profits and gains of the business could not be properly deduced therefrom, is a question of fact, yet if there is no evidence on which the income-tax authorities acted, a question of law arises, and the proviso to section 13 would have no application.⁴

¹ *In re Feroze Shah*, A. I. R. 1930 Lahore 197; 4 I. T. C. 315.

² *Jewan Shah Maya Shah v. Commissioner of Income-tax, Punjab*, 8 I. T. L. J. 208; A. I. R. 1934 Lah. 876; *Chanlo Chwan and Tong Hock Hin v. The Commissioner of Income-tax, Burma*, A. I. R. 1929 Rangoon 102; 3 I. T. C. 397.

³ *Haji Alijan v. Commissioner of Income-tax, Punjab*, 8 I. T. L. J. 258; *Narayan Atnaram Patkar v. Commissioner of Income-tax, Bombay*, 1934 I. T. L. J. page 177; *Diwan Chand Kabari v. Commissioner of Income-tax, Punjab*, 1934 I. T. L. J. page 205; A. I. R. 1932 Lah. 178.

⁴ *Pioneer Sports Ltd., Sialkot v. Commissioner of Income-tax, Punjab*, 1933 I. T. L. J. page 209; *Shrimati Nehi Devi v. Commissioner of Income-tax, Punjab*, 1934 I. T. L. J. page 220.

Section 13 does not authorize the Income-tax Officer or the Assistant Commissioner to make private inquiries and to make the result of such private inquiries the basis of assessment. See also notes under section 23 (3).¹

The finding of fact of an Income-tax Officer taxing an assessee on the method of accounting suitable to the case in the eye of the officer, is open to appeal to higher Income-tax Authorities as provided by the Income-tax Act.² The Income-tax Officer is bound to employ some method even when the account books are not furnished. He cannot act arbitrarily.³

Where a colliery proprietor had invested his monies on mortgages and loans but maintained no regular accounts in respect of his investments, but kept regular accounts as regards his income from colliery, it was held that the Income-tax Officer was justified in making the assessment under the proviso to section 13.⁴

Proviso and section 23 (4).—Section 23 (4) has no application when an assessment is made under section 13. Section 23 (4) can be applied only where there is a default. Nor is an Income-tax Officer competent to dispense with a notice under section 23 (2).⁵

¹ Gopinath Naik v. Commissioner of Income-tax, U. P., 1936 I. T. L. J. page 21.

² A. I. R. 1933 P. C. page 108.

³ A. I. R. 1931 All. 23.

⁴ Ishar Das v. Commissioner of Income-tax, Punjab, A. I. R. 1931 Lab. 432.

⁵ Rampertap Singh Dial v. Commissioner of Income-tax, Dehli, A. I. R. 1930 Lahore 277.

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.

Exemptions of a general nature.
P. 11, 70.

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

(a) any sum which he receives by way of dividends 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

P. 10, 71

(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.

P. 72.

History.—Under Act VII of 1918, no account was taken of any income which the assessee received as a member of a company or of a firm or of an undivided family, where the company, the firm, or the family was liable to the tax, but such income was however taken into account in computing the total income of the assessee. The words “is liable to the tax” in the previous Act have been changed into “have been assessed to tax.” The words “at the time of such assessment” were introduced by Act III of 1928. Clause (c) has been added by Act XXII of 1930.

Applicability.—In order that section 14 (1) can apply, the assessee should establish that he is a member of a Hindu undivided family, and further that the sum in

question has been received by him as such. The relation of cause and effect must exist between the position of the assessee as a member of a Hindu undivided family and the receipt by him of the sum which is a question for the purpose of assessment. If a person who is a member of a Hindu undivided family receives an allowance not because he is such a member but wholly apart from that portion, section 14 (1) does not apply. It is only if the assessee has received the sums in question by virtue of his position as a member of the undivided family to which he claims to belong that the application of section 14 (1) is attracted.¹

Taxation of a Hindu Undivided Family.—A Hindu undivided family is treated as a separate entity for income-tax purposes. It is taxed like an individual at a graded scale according to its total income and no account is taken of how that income is distributed amongst the individual members when such individual members are assessed to income-tax or super-tax in respect of their separate income. This applies even in cases where the amount of the income of the Hindu undivided family is less than Rs. 2,000 and is, therefore, not liable to taxation in the hands of the manager of the family. The same remarks apply to super-tax.

Section 25-A will only apply if a member of a Hindu undivided family claims that it has become divided. If, however, the family prefers to go on being assessed as undivided though really divided, the Income-tax Officer has no authority to act under this section. If the Income-tax Officer has not passed an order under section 25-A (1) in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed to continue to be a Hindu undivided family.

The taxation of the income of a Hindu undivided family thus differs from the taxation of the income of an unregistered firm since

¹ Vijayananda Gajpatiraj Bahadur of Vizigapattam, A. I. R. 1934, see page 582 ; 8 I. T. L. J. page 49 at 50 ; A. I. R. 1934 All. 818 ; Ambika Prasad Singh v. Commissioner of Income-tax, Behar and Orissa, A. I. R. 1926 Pat. 256 ; 5 Pat. 20.

where the profits of an unregistered firm are not liable to taxation in the hands of the firm, such profits are taxed in the hands of the individual partners both for the purposes of income-tax (section 14 (2) (b) and section 16 (1)) and super-tax (section 55 proviso), and where the profits are taxed in the hands of the unregistered firm, the share of such profits of each partner is included in his "total income" for the purpose of determining the rate at which he shall pay income-tax on his other income (section 16 (1)).

Where the income, profits and gains of a member of an undivided Hindu family consist of his personal earnings and acquisitions by his own exertions, they must be treated as his self-acquired property and not as joint family property, unless they flow from the employment in business or otherwise of the joint funds.

Khojas (and Cutchi Memons), not being Hindus, joint families composed of such persons are not Hindu undivided families for the purposes of the Act.

Jain and Sikh undivided families should be treated as Hindu undivided families, unless in any particular case, the assessee claim that they should not be treated as such. Where such a claim is put forward, it is for the assessee to prove the existence of some special custom or practice applicable to the family in question which would justify its not being treated as a Hindu undivided family.

For the method of serving notices or requisitions on a Hindu undivided family see paragraph 137.¹

Allowance received by a junior member of a Hindu undivided family.—Where the assessee is a member of a Hindu undivided family, of which the other member is the holder of an impartible estate, sums of money received annually by the assessee as maintenance from the impartible Raj is not liable to income-tax, and super-tax unless it is shown that the assessee is not entitled by custom to any

¹ I. T. Manual, para 70, pages 211-212.

maintenance out of the income of the Raj.¹ The grant by way of maintenance should be received by a member of a joint Hindu family as such member, to be exempt from tax. The burden of proving that the grant was received by the assessee as a member of joint Hindu family is on the assessee. Section 14 (1) premises three conditions: (1) a Hindu undivided family, (2) the person claiming exemption being a member of the family, and (3) the sum referred to being received as a member of the family. Exemption cannot be allowed, where any of the above conditions are not fulfilled. An allowance given to a co-widow by another co-widow under an agreement by which they agreed to settle the property of their late husband, was held not to be received as a member of a joint Hindu family and as such not entitled to exemption.²

In case of a joint Hindu family, the tax is levied on the family as such, and if allowances made to members were to be taxed, the same income would be taxed twice over. Therefore the income is taxed in the hands of the person making the allowance and not in the hands of a member receiving the same as such. Maintenance and arrears of maintenance received by a widow of a member of a joint undivided Hindu family is exempt under section 14 (1).³

Impartible Estate.—Ordinarily every junior member of an undivided family possessed of impartible property is not as of right entitled to claim maintenance in the absence

¹ *In re* Vijayananda Gajpatiraj Maharaj Kumar of Vizianagram, 8 I. T. L. J. 1934, page 49; A. I. R. 1934 All. 818.

² Maharani Lakshmi Beti Sahiba v. Commissioner of Income-tax, Behar and Orissa, I. T. L. J. 1935, page 1.

³ Vedathanni v. Commissioner of Income-tax, Madras, 1932 I.T.L.J. page 222 F. B.; A. I. R. 1932 Mad, 733 F. B.

of a custom to the contrary. But in the case of a younger son of the deceased proprietor his right to maintenance from the impartible Raj has been so often asserted and recognized that a court is entitled to presume that such a right exists.¹ A sum of money received as maintenance by an assessee as the brother of a deceased zamindar out of an ancestral impartible estate is a sum received by him as a member of the Hindu undivided family and thus exempt from tax.² But in a Patna case, it was held that the income of an impartible estate is that of the incumbent for the time being and the fact that he is bound to maintain some junior members also does not entitle him to treat the income as that of the undivided family. This was a case in which, while deciding the liability to super-tax, it was held that the assessee, a proprietor of an impartible estate was not entitled to deductions that are allowable in case of a joint Hindu family.³ In the case of Vijayanand Gajpatiraj,⁴ it was held by the Allahabad High Court that the junior members of the Vizianagram Raj are members of an undivided family, and that money received by way of maintenance from the income of the impartible Raj, is not entitled to income-tax and super-tax, unless it is shown that the assessee is not entitled by custom to any maintenance from the income of the impartible Raj.

The Madras High Court has held that maintenance and arrears of maintenance received by the widow of a deceased

¹ *In re* Vijayanand Gajpatiraj, 1934 I. T. L. J. page 50.

² *Zamindar of Chenudu v. Commissioner of Income-tax, Madras*, 1934 I. T. L. J. page 152; A. I. R. 1932 Mad. 1023. *Visheshwar Singh v. Commissioner I. T., Bihar and Orissa*, 1935 I. T. L. J. page 242.

Raja Shiva Prasad Singh of Jharia v. King-Emperor, A. I. R. 1924 Pat. 679.

⁴ 1934 I. T. L. J. 49.

member of a joint Hindu family is exempt from income-tax, on the ground that the widow is a member of the joint family with the other male members or the sole surviving member of the family, and as such the maintenance that she receives is received as a member of the joint family as of right.¹

It follows therefore that the case of zamindari of Chenudu is not inconsistent with the two cases. Tax will be paid by the head of the impartible estate on the total income which includes allowances to junior members, where the latter can be held to constitute a joint Hindu family with him, the latter not being liable to tax on the allowance received by them. In case of persons who cannot be held members of such joint family, the allowance which the assessee is compelled will be allowed as deduction to his income in computing his income liable to tax, and the allowance will not come within section 14 (1) as not received as member of a joint Hindu family and will be liable to tax in the hands of the recipients. Thus where a father received a gratuitous allowance from his son out of the income of an estate which the latter received from a maternal grandfather, the allowance was held liable to tax in the hands of the father.²

Where on a partition of a joint Hindu family, a certain business is allotted to one particular member, income received by the family from that business by the family, prior to partition is the income of the family and not that of the member concerned. The member entitled to the concern is not liable for remittances prior to partition, the income is joint

¹ *Vedathanni v. Commissioner of Income-tax, Madras*, 7 I. T. L. J. page 222 F. B.

² *In re Ambika Prasad Singh*, 2 I. T. C. 92; 5 Pat. 20.

family income and cannot be taxed for which it is received by all.¹

Company—Fixed Preference and Ordinary Shareholder.—In a joint stock company, as between fixed preference and ordinary shareholders, the former are not entitled to have their preference dividends paid free of income-tax, in absence of express words to that effect in the contract regulating the rights of parties.²

Section 14 (2) (a), Income-tax Act, does not imply that unless the whole of the profits or gains of a Company have been assessed, the dividend-receiver cannot avail himself of the provisions of the section. Where the company which paid the dividend was in the position of having had some profits or gains assessed to income-tax, it is sufficient to secure to the shareholders the whole of the dividends even though those dividends were in fact to some extent paid out of profits or gains in the hands of the paying Company which were free from taxation altogether.³

Firms.—Clause (b) applies both to registered and unregistered firms.⁴

Where part of the profits of a registered firm have escaped assessment, a partner has no right to require

¹ V. R. S. A. R. Arunachalam Chettiar v. Commissioner of Income-tax, Madras, A. I. R. 1929 Mad. 769 F. B., 3 I. T. C. 441. See also section 25-A infra.

² Parshotamdas Harkishan Das v. The Central India Spinning and Weaving and Manufacturing Co. Ltd., 1 I. T. C. 11.

³ Hungerford Investment Trust Ltd. v. Commissioner of Income-tax, Bengal, 1934 I. T. L. J. page 187.

⁴ A. I. R. 1931 Cal 686 S. B.

assessment on firm first before he can be assessed to tax. Where part of the profits of a registered firm has escaped assessment, assessment can be made under section 34 and taxes levied upon a partner of the firm in respect of his share of such part, when proceedings under the said section against the firm itself in respect of the said part have failed for lack of jurisdiction and fresh proceedings are time-barred. There is nothing in the Act to say that the assessment on the firm is to operate as a sort of estoppel in favour of individual partners.¹

Taxation of Associations of individuals.—An association of individuals, other than a firm, Company or a Hindu undivided family, is liable to income-tax and super-tax as if it were an individual. Tax is not payable by an assessee in respect of any sum which he receives as his share of the profits or gains of an association the profits or gains of which have been assessed to income-tax, but such sum will be included in his "total income" to determine his liability to income-tax and the rate applicable to him.²

Sub-clause (c) was added by Act 22 of 1930.

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.

Exemption in the case of life insurances.

P. 11, 69.

* * * * *

(2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any

¹ *In re* Neem Chand Daga, A. I. R. 1931 Cal. 686 S. B.; 35 C. W. N. 534.

² I. T. Manual, para 72, page 214.

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 58-F exceed one-sixth of the total income of the assessee.

P. 11.

P. 24.

History.—Before the passing of Income-tax Act of 1918 the exemption regarding contributions to insurance rested on a notification under the Act of 1886. Under the Income-tax Act of 1918, the exemption applied to 1/6th of “chargeable income” and not to total income. The change was made by the Act of 1922. The words “and any sums” exempted under sub-section (1) of section 58-F were added by Income-tax (Provident Fund Relief) Act, 12 of 1929.

Exemptions on account of life insurance.—Under the provisions of section 7 (1) proviso and section 15 an abatement of income-tax is given, after the assessment of the tax has taken place, on such portion of an assessee's income as may have been

- (i) deducted from his salary under the authority and with the permission of the Government for the purpose of securing a deferred annuity to him or making provision for his wife or children (section 7 (1) proviso);
- (ii) paid by him to an Insurance Company in respect of an insurance or deferred annuity on his own life or on the life of his wife; or
- (iii) paid by him as a contribution to any of the provident funds mentioned in paragraph 23.

Provided that the total amount on which an abatement will be permitted under this provision may not exceed one-sixth of the total income of the assessee.

Contributions to the Widows, Orphans and Old Age Contributory Pension Fund, 1925, are exempt from income-tax since they are deducted under the authority of Government from the salaries of the soldiers concerned for the purpose of securing to them a deferred annuity and of making provision for their wives and children.

Compulsory allotments from a soldier's pay made to his wife in England under Article 836 of Royal Warrant for Pay, are exempt from income-tax since they are deducted under the authority of Government, for purposes of making provision whether present or future for the wife.

Deductions at source on account of contributions made by an officer to provide passage money for his widow and orphans under the Indian Military Service Family Pension Regulations and the Indian Military Widows and Orphans Funds Regulations are exempt from income-tax as the contributions are in the nature of life insurance premia. Under the rules, a certificate of health is required before an officer can contribute and the contribution which he has to pay is regulated according to the age of the officer concerned.

Out of the premia paid in respect of a policy that covers the risks of sickness and accidental injury and also the risk of death, only so much as is attributable to the risk of death (from whatsoever cause) is admissible as deduction from the income liable to tax. The portion of the premia so attributable should be settled in consultation with the Insurance Company concerned, whose formula should be accepted unless there appears to be some strong ground for modifying it.

No rebate of income-tax is allowed on any sum withdrawn by an assessee from his Provident Fund in order to pay his life insurance premium.

Rebate of income-tax in respect of a premium paid on account of life insurance is admissible to a partner of a registered firm individually whose income is taxed at source, in addition to the refund of tax to which he may be entitled under section 48.

It is to be particularly noted that the insurances in respect of which this concession is granted are insurances on the life of the assessee himself or his wife, and not any other form of insurance whatsoever. The solitary exception is in the case of a Hindu undivided family in the case of which

insurances are permissible on the life of any male member of the family or of the wife of any such member and not merely on the life of the head or manager of the family. But though insurances on the life of a child do not entitle the assessee to the concession, it should be noted that certain kinds of insurance which are for the benefit of the child should be treated for the purposes of section 15 as insurances on the life of the assessee. Policies are often taken by assessees with a view to securing a provision of a lump sum for their children for their marriage, education or other purposes at a stipulated time and the sum assured becomes payable on that date even if the subscriber dies after paying one premium only. An insurance of this kind is really an insurance on the life of the assessee as it is designed to secure in the event of the assessee's early death (though not immediately after his death) a benefit considerably greater in amount than the annual payments which he has made and consequently contributions to such policies are eligible for rebate under section 15 (1). The criterion that should be adopted in such cases is whether or not there is a contract dependent on the life of the assessee.

For the purpose of an abatement claimed by an assessee under this section insurance premia payable in sterling should be converted at the rate of exchange in force on the day on which the premium payment was made in case where the assessee is unable to state the actual cost of remittance.

A claim for abatement under this section must, if the payment is made otherwise than by a deduction from salary, be supported either—

- (a) by the original receipt, of the Insurance Company or fund ;
- (b) where the claim is made by a servant of the Government or of a local authority, by a copy of the original receipt presented along with the original to the officer who pays the salary and attested by that officer who should, after such attestation, return the original with a note endorsed upon it that it has been produced and allowed for, a copy being attached to the bills sent with the list of payments;
- (c) by a duplicate receipt or certificate of payment given by the Insurance Company or provident fund, provided a

certificate is given that the original receipt is lost or is not forthcoming; or

(d) where an insurance company does not issue a formal receipt, by a certificate of payment of the premium.

Where the Income-tax Officer is satisfied that none of the above prescribed documents can be produced without an amount of delay, expense or inconvenience, which, under the circumstances of the case, would be unreasonable, he may accept such other proof of payment of the premium as he may deem sufficient.

Abatement on account of insurance can be given effect to by the person deducting income-tax from salary at the time of payment under section 18 (2).

Where the payment on account of insurance premia, etc., is not claimed at the time when tax is deducted from salary, it may be claimed in the assessment and in the return given by assessee under section 22 (2) or if no assessment is made, a refund on account of such rebate may be claimed under section 48-A.

While strictly speaking abatements on account of insurance premia should only be made in assessing the income of the year in which the premia were paid, the rigid enforcement of this interpretation is likely to cause considerable inconvenience to assesseees who desire that the abatement should be given effect to when tax is deducted from their monthly salary, particularly in cases where the premia have been paid to foreign companies towards the end of a financial year and the receipt for the premia are not forthcoming until the following financial year. In such cases abatements of insurance premia may be allowed by officers responsible for deducting income-tax from salaries under section 18 (2) at the time of payment of the salary provided that the premia in respect of which abatement is claimed have been paid within six calendar months ending with the close of the month for which the salary is drawn.

While the officers responsible for deducting income-tax at the source under section 18 (2) of the Act should allow an abatement where claimed, they need not carry out a check to see whether the abatement

claimed under this section exceeds one-sixth of the salary of the officers concerned. This can be looked after by the Income-tax Officer to whom returns are furnished under section 21. The deducting authority should however see that claims for such abatements are made within the period prescribed.

It is to be particularly noted that this abatement does not apply to super-tax, section 15 being made inapplicable to super-tax by section 58.¹

Premiums paid in cash only in part.—Where life insurance premiums paid only partly in cash and partly by advance made by the company on the security of the policy, only that portion of the premium which is paid can be allowed to be deducted.²

Double endowment policy—Deduction of premiums.—In case of endowment policies the total amount of premiums is to be allowed to be deducted.³

Sums paid in commutation of Future Premiums.—In order that exemption permissible under this section be allowed, it is necessary that the payment should be annual. If the payment is a commutation payment, there is nothing in the nature of an annual payment, but a commutation the order to bring the insurance adventure to an end so far as the liability of the assured is concerned, and the exemption under this section cannot be allowed.⁴

Insurance on joint lives.—This section exempts only sums paid to effect an insurance on one's own life or on the life of his wife etc. It contemplates payments made

¹ I. T. Manual, para 73, pages 214—217.

² Hunter v. The Attorney General, 5 T. C. 13.

³ Gould v. Curtis, 6 T. C. 293.

⁴ Turton v. O'Brien, 7 T. C. 170.

towards insurance on single life, individual's life, though there may be several such individuals in cases of Hindu undivided families. The exemption does not contemplate insurance on joint lives. Where therefore an assessee has made an insurance not on his life only, but has made an insurance jointly with some other individual, this section can have no application.¹

Policies against risk etc.—A policy which does not insure against death cannot be a policy of insurance on life; but if death is any one of the contingencies provided in the policies the assessee is clearly entitled to deduct that portion of the premium which represents the death risk.

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.

Exemptions and exclusions in determining the total income.

P. 11.

(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

P. 74, 82.

amount of income-tax payable by the company in respect of the dividend received.

See also notes to sections 17 and 20 infra and section 2 (15) supra.

History.—The words “the second and third” proviso have been added by the Income-tax Amendment Act 28 of 1933.

¹ Wilson v. Simpson, 10 T. C. 753.

Tax deducted or collected at source to be included in income.—Section 16 (2) (which provides that the amount received by a shareholder in a company by way of dividend shall be increased by the amount of income-tax payable by the company in respect of the dividend received) and section 18 (4) (which provides that where income-tax is deducted at the source from salaries and interest on securities, the tax so deducted shall, for the purposes of computing the income of an assessee, be deemed to be income received) have been inserted in order to make it clear that in the cases of taxation at the source and of the deduction of tax at the source it is the gross amount of the income (i.e., including the tax deducted) which is to be taken into account in determining the rate at which an assessee shall be liable to income-tax on the rest of his income and also his income for liability to super-tax.¹

Total Income.—A different interpretation has been put on these words in this section than is given in section 2 (15). Under this section total income of an assessee means his total income from all sources whether the tax is deducted at source or assessed in the hands of the individual. The only exception is made in case of joint Hindu families, income from which is not included in computing the total under section 14 (1) read with section 16 (1).

Super-tax.—Under this section total income of individual partner in a registered firm means actual income in the previous year, without deducting taxes and receipts exempt from income-tax ; subsequent increase of his share does not furnish a basis of his income.²

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

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

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¹ I. T. Manual, para 74, page 217.

² Commissioner of Income-tax, Bombay v. Philip Seddan Mellor, A.I.R. 1924 Bom. 361

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.

Restriction of income-tax where margin of income above a certain limit is small.—Section 17 is designed to remedy the anomaly which previously existed where an assessee with an income just in excess of one of the stages in the Finance Act and therefore liable to pay income-tax at a higher rate than if his income were just below that stage, found himself, after the payment of the tax, worse off than he would have been, had his taxable income been below that stage.

Illustration.—The amounts of tax given in the illustrations below include surcharge of $16\frac{2}{3}$ per cent. imposed by the Indian Finance Act, 1935, except in the case of incomes below Rs. 2,000. Tax on incomes between Rs. 1,000 and 1,499 has been calculated at $1\frac{2}{3}$ pies in the rupee and between Rs. 1,500 and Rs. 1,999 at $2\frac{2}{3}$ pies in the rupee.

Income.					Tax payable if section 17 had not been passed.	Tax payable under section 17.
999	...	...	...	...	Nil	Nil
1,000	...	...	...	...	6-15	1-0
1,006	...	...	...	...	7-0	7-0
1,999	...	...	...	...	27-12	27-12
2,000	...	...	...	...	78-5	28-12
2,045	...	...	...	...	78-15	62-10
4,999	...	...	...	...	182-5	195-5
5,000	...	...	...	...	273-0	183-5

The marginal relief allowed under section 17 and the exemptions referred to in section 7 (1), proviso to section 8, and section 15 (1) should

not be regarded as alternatives. The correct method of working the two sections concurrently is as illustrated in the following example :—

If a man's total income is Rs. 5,010 and he pays Rs. 100 as Insurance premia, the tax he should pay is that on Rs. 4,999 minus Rs. 100 (Rs. 4,899) at six pias plus Rs. 11. The tax payable will be the same as if his total income is Rs. 5,010 of which Rs. 100 is derived from tax-free securities or from an unregistered firm that has been assessed to income-tax, but if the Rs. 100 were derived from a registered firm, or from dividends the total tax to be suffered would be Rs. 193-5-0 against which credit would have to be given for the tax indirectly suffered on the share of the firm's income or the dividend, Rs. 15-13-0 so that the net sum payable would be Rs. 177-8 0.

The following points should be borne in mind in applying section 17 where a portion of the assessee's income is derived from an unregistered firm that has paid income-tax :—

- (i) Income-tax is not "payable" by a partner in a firm on his share of the firm's income.
- (ii) Relief is to be given to an assessee in respect of the "income-tax payable by him."
- (iii) Section 17 is to be applied (a) "where necessary," (b) in order to "reduce" the tax and (c) so that the result of an assessee's total income exceeding a sum after which the rate of tax rises, shall not be that the extra tax due to the rise in the rate is greater than the excess of the total income over the maximum sum liable to the lower rate. The section is not to be applied where it is not necessary to do so, that is, where the result of applying it would not be to reduce the tax.

For the purpose of calculating the tax payable by an assessee under section 17, surcharge imposed by the Indian Finance Act, 1935, should be calculated on the rate of tax applicable to the next lower stage of income and then to the amount of tax so arrived at should be added the amount by which his total income exceeds the next lower stage without adding any surcharge on the latter amount. For example, the tax payable

on an income of Rs. 5,000 will be the tax payable on Rs. 4,999 at the rate of 6 pies per rupee, viz., Rs. 156-4-0 plus surcharge of 25 per cent. on this amount, viz., Rs. 24-1-0 plus the difference between Rs. 5,000 and Rs. 4,999, viz., Re. 1. Surcharge will not be calculated on the whole amount of tax, viz., Rs. 157-4 but only on Rs. 156-4.¹

Chapter IV

DEDUCTIONS AND ASSESSMENT

18. (1) Repealed by the Indian Income-tax (second
P. 75. amendment) Act, 1933 (XVIII of 1933).

(2) Any person responsible for paying any income
P. 36, 73, 77. 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 Government, and the value in rupees of such income shall be calculated at the prescribed rate of exchange.

¹ I. T. Manual, para 75, pages 218-219.

(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 Government of India 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 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 (3C) 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.

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(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.

(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 Government of India, 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.

R. 19, 12.
P. 76.

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-sections (3), (3A) (3B), (3C) or (3D) shall, at the time of payment of interest, furnish to the person to whom the interest is paid 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.

P. 78, 116.
R. 13.

History —Sub-section (1) was inserted by the Income-tax (Second Amendment) Act XVIII of 1933.

The words ‘but not super-tax’ in sub-section (2) were added by the Income-tax (Second Amendment) Act XVIII of 1933.

Sub-clause (2a) was added by the Income-tax (Second Amendment) Act XVI of 1925.

The words “unless otherwise prescribed in the case of any security of the Government of India,” the proviso after

sub-clause (3), sub-clauses (3A), (3B), (3C), (3D), the words "or super-tax" in sub-clause (5) the words "or under" in sub-clause (7) and "or super-tax" and (3A), (3B), (3C) or (3D) and "or super-tax" after the word income-tax in sub-clause (9) were added by the Income-tax (Second Amendment) Act XVIII of 1933. Sub-clause (2a) was inserted by Indian Income-tax (Second Amendment) Act XVI of 1925.

Rule 10.—All sums deducted in accordance with the provisions of section 18 of the Act shall be paid by the person making the deduction to the credit of the Government of India on the same day as the deduction is made in the case of deduction by or on behalf of Government, and within one week from the date of such deduction in all other cases :

Provided that the Income-tax Officer may, in special cases, and with the approval of the Assistant Commissioner, permit a local authority, company, public body or association, or a private employer to pay the income-tax deducted from salaries quarterly on June 15th, September 15th, December 15th, and March 15th.

Rule 11 —In the case of income chargeable under the head 'Salaries,' where deduction is not made by or on behalf of Government, the person paying the salary shall pay to the credit of the Government of India by remitting the amount to the Income-tax Officer concerned or to such officer as he may direct and shall send therewith a statement showing the name of the employee from whose salary the tax has been deducted, the period for which the salary has been paid, the gross amount of the salary, the deduction for a provident fund or insurance premia, and the amount of tax deducted.

Rule 11-A.—The prescribed rate of exchange for the calculation of the value in rupees of income chargeable under the head 'Salaries' which is payable to the assessee out of India by or on behalf of Government shall be the rate notified by the Controller of the Currency in respect of the recovery of contributions to the Indian Civil Service Fund for the month in which such income is payable.

Rule 12—In the case of income chargeable under the head 'Interest on securities,' where the deduction is not made by or on behalf of Government, the person responsible for paying the interest shall send to the Income-tax Officer concerned a statement showing the following particulars :—

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- (i) Description of securities.
- (ii) Numbers of securities.
- (iii) Dates of securities.
- (iv) Amounts of securities.
- (v) Period for which interest is drawn.
- (vi) Amount of interest, and
- (vii) Amount of tax.

The person concerned shall, on receiving from the Income-tax Officer the necessary chalan for the amount of tax which is to be credited, pay that amount to the credit of the Government of India by remitting it into the Government Treasury or Branch of the Reserve Bank of India or of the Imperial Bank of India. (Rule 12).

Rule 12A.—(i) The person making deductions in accordance with sub-sections (3A), (3B), (3C) and (3D) of section 18, shall send to the Income-tax Officer within a week from the date of such deduction a statement showing the name of

the non-resident person on whose behalf the tax has been deducted, the amount of tax deducted, the amount of interest or the gross and net amount of dividend (with the basis of computation of the gross amount) in respect of which the deduction has been made, the period for which the interest or the dividend has been paid and the date of payment of the interest or declaration of the dividend, as the case may be.

(ii) On receipt of this statement, the Income-tax Officer shall, without delay, supply to the person concerned a chalan in triplicate for the purpose of paying the deductions into the Government Treasury or Branch of the Imperial Bank of India.

(iii) Within one week from the date of receipt of the chalan, the person making the deduction shall pay the amount in question to such Government Treasury or Branch of the Imperial Bank of India as the Income-tax Officer may direct. (I. T. Manual, Rule 12-A.)

Rule 13 — The certificate to be furnished under section 18 (9) of the Act by any person paying interest chargeable to income-tax on any security of the Government of India or of a local Government shall be in the following form :—

Draft No. ¹

Certified that Rs. _____ being income tax at the rate of _____ pies per rupee has been deducted by draft of this date from Rs. _____ being the amount of interest for Rs. _____ on² _____ for Rs. _____ standing in the name of _____ for Rs. _____

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(1) This number also appears in the interest cases on the back of the securities.

(2) Name of security.

To be signed by claimant.

I hereby declare that the securities on which interest as above specified has been received were my own property and were in the possession of at the time when income-tax was deducted.

Signature.

Date

(N.B.—The securities to be produced when required in support of any claim.)

Rule 13-A.—The certificate to be furnished under section 18 (9) of the Act by the person
 P. 78. paying any interest on debentures or other securities for money issued by or on behalf of a local authority or a company shall be in the following form :—

Name of Local Authority/Company.

Address.

To

Name and address of payee.

I/We hereby certify that Rs. being income-tax at the rate of pies per rupee has been deducted from Rs. being the amount of interest at the rate of per cent. per annum due on debentures Nos. of Rs. each of the and that it has been or will, within the prescribed period, be paid by me/us to the Government of India at

Superintendent, Public Debt Office,
 or Principal Officer or Managing Agents.

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(To be signed by claimant.)

I hereby declare that the securities on which interest as above specified has been received, were my own property

and were in the possession of _____ at the time when
income-tax was deducted.

Signature

Date

(N.B.—The securities to be produced when required in support of
any claim).¹

(See also notes to sections 7, 15, *supra* and sections 23-A and 48
infra.)

Rule 13-B—The certificate to be furnished under
section 18 (9) of the Act by the person paying any interest
not being “interest on securities” shall be in the following
form :—

Name of person paying interest—

Address :—

To

Name and address of payee.

I/We hereby certify that Rupees _____ being income-tax
at the rate of _____ pias per rupee and Rupees _____ being
super-tax at the rates applicable have been deducted from
Rupees _____ being the amount of interest paid on _____ at
the rate of _____ per cent. per annum for the period (1)
computed on the amount of Rupees (2)

Signature of person paying interest.

(1) Here specify the period for which interest has been
paid.

(2) Here state the amount on which interest has been
computed.²

¹ I. T. Manual Rule 13-A.

² I. T. Manual Rule 13-B.

Rule 13-C—The certificate to be furnished under section 18 (9) of the Act by the person paying any dividend on shares registered in the Reserve Bank of India shall be in the following form :—

Name of person paying dividend.

Address

To

Name of payee.

I hereby certify that Rs. being income-tax at the rate of pies per rupee has been deducted from Rs. being the amount of dividend at the rate of per cent. per annum due on shares of Rs. and that it has been or will, within the prescribed period, be paid by the Bank to the Government of India at

Governor,

Reserve Bank of India.

193 .

(To be signed by claimant.)

I hereby declare that the shares on which dividend as above specified has been received, were my own property and were in the possession of at the time when income-tax was deducted.

Signature.

Date.

(1) Here specify the date on which dividend is payable.

(N.B.—The share certificates to be produced when required in support of any claim.)¹

¹ I. T. Manual Rule 13-C.

Deduction of the tax at source.—Section 18 of the Act provides for the deduction of tax at the source as distinguished from taxation at the source referred to in paragraph 11. It provides for the income-tax being deducted by the persons responsible for making payments of "salaries" or "interest on securities" before such payments reach the hands of the recipients. The section also requires all persons responsible for paying any interest, not being interest on securities, to a non-resident to deduct at the time of payment income-tax and super-tax therefrom if the amount of such interest exceeds the maximum amount which is not chargeable with super-tax. Similarly where a dividend payable to a non-resident shareholder exceeds the maximum which is not chargeable with super-tax the company paying the dividend should deduct super-tax at the time of payment. In respect of the two last mentioned sources of income the Income-tax Officer is also empowered to direct the person responsible for paying them to deduct tax if he has reason to believe that the total income of such non-residents will exceed the maximum which is not chargeable with super-tax. The tax so deducted is paid over by the persons making the deduction to the credit of the Government of India within the period specified in rule 10 along with a statement giving the details shown in rules 11 and 12. Such deductions of income-tax are under sub-section (5) of section 18, treated as payments of income-tax on behalf of the persons from whose income or interest the deduction was made and credit is given to them in the assessment of their income if an assessment is made of their other income. The form of return of income that has to be made under section 22 (2) prescribed in rule 19, therefore, provides for the tax previously charged upon the income being set off against any additional charge, while section 48 (3) provides as an alternative for a refund in cases where the rate deducted is greater than that applicable to the total income of the assessee.

Section 18 (2) (a) of the Act provides that all payments on account of salary made out of India by and on behalf of Government shall be included in the amount on which tax is deducted at source in India. All leave salary paid in the United Kingdom or a Colony to Government servants on leave in the United Kingdom or the Colony has been exempted from tax, vide paragraphs 17 and 38. Any sterling overseas pay or other sum that may be paid in the United Kingdom or a Colony to an officer on leave in the United Kingdom or Colony on account of his salary while on leave is, therefore, exempt from income-tax. The fact that a part of the

leave salary is drawn in India does not affect the exemption of the balance drawn in the United Kingdom or a Colony. The part of the leave salary that is paid in sterling in the United Kingdom or a Colony to an officer on leave in the United Kingdom or a Colony should not, therefore, be included in the income from which tax is deducted at source by the officer paying him the rupee portion of the leave salary in India. The same principle applies to other payments falling under "salaries" within the meaning of section 7 of the Act made partly in India and partly out of India and exempt under any notification issued under section 60 of the Act. The salary paid in the United Kingdom or a Colony to an officer on duty in the United Kingdom or a Colony is exempt irrespective of whether it includes sterling overseas pay or not. So also vacation salaries paid in the United Kingdom or a Colony when on vacation therein.

Any person required to make a deduction under section 18 who fails to do so, may himself, under sub-section (7) be deemed to be personally in default in respect of the tax while he is also liable to be prosecuted for an offence punishable under section 51 (a). A penalty can also be imposed under section 46 (1) for such default if the Income-tax Officer is satisfied that such person has wilfully failed to deduct and pay the tax.

The words "person responsible for paying" used in section 18 (2) should be interpreted as referring to the person entrusted by the employer with the duty of paying salaries and not to the employer himself if he does not himself pay them and this applies also to the case of an employee entrusted by an employer with the payment of his (employee's) own salary.

Persons making deductions at the source are indemnified for the deduction under section 65.

The provisions of this section obviously cannot apply to cases where the payments are made outside British India as, for example, the payment of "interest on securities" in Indian States or in foreign countries or the payment of "salaries" by foreign employers to residents in British India. It is for this reason that section 19 of the Act specifies that in any case where income-tax has not been deducted in accordance with the provisions of section 18, the tax is payable by the assessee direct. This provision covers, not only cases where the employer or the person paying "interest on securities" does not reside in British India,

but also cases where owing to an assessee's salary being less than Rs. 2,000 income-tax has not been deducted.¹

Deduction at source of tax on "Salaries."—The Act of 1918 provided that where a payment was a non-recurring payment, the tax should be deducted at the rate appropriate to that particular sum as if it were the whole of the assessee's income, and that where a payment was a recurring payment, the tax should be deducted on the assumption that the total income of the assessee amounted to twelve times the recurring sum. As these provisions gave rise to considerable amount of unnecessary trouble to assessees and their employers as well as to income-tax authorities, section 18 (2) of the Act now provides that deductions from salary shall be made at a rate which should approximate as closely as possible to the rate appropriate to the total assessable income of the assessee under the head "salaries," and it further empowers the person deducting income-tax from "salaries" to rectify, in subsequent deductions, mistakes made in previous deductions. Thus, if an employee's regular monthly salary is Rs. 500, the tax would be deducted by the employer at the rate appropriate to Rs. 6,000 but if such an employee received a commission or bonus or arrears of pay or officiating allowance amounting to Rs. 5,000, the employer is empowered not only to make deductions in future at the rate appropriate to an income of Rs. 11,000, but also to make up the deficiency in previous collections owing to the lower rate having been applied.

Salaries are sometimes paid or adjusted annually. Meanwhile, the employee may draw (and even overdraw) against the salary due or that will become due to him. If employers claim to deduct as business expenses the sums thus drawn by their employees, this can only be done on the ground that the sums represent salary and therefore, tax should be deducted at source from all such sums. When it is found that tax has not been deducted, the employee should be assessed direct on all such sums if they have been allowed to the employer as business expenses. If they are not so allowed, they need not be taxed in the employee's hands whether by deduction or by direct assessment till the drawings are adjusted against salary actually earned and are claimed as business expenditure by the employer.

¹ I. T. Manual, para. 76, pages 219-221.

The obligation to deduct income-tax under this head now applies to all employers.

For the power of an employer to allow abatements on account of insurance premia see paragraph 73. As regards private employers, it may be noted that it is open to them to make these allowances on account of insurance premia or not according as it may suit the convenience of themselves and their employees as, if such rebate is not given when the tax is deducted at the source, it may be claimed by the employee in the following year, if he is assessed under section 23, either as a refund or as a set-off against any amount due by him.

As regards the meaning of the word "salaries" see paragraph 36 (section 7).

For the deduction from "salaries" of arrears of tax due see paragraph 115.¹

Income-tax, leviable in advance under this section by deduction at the time of payment in respect of income chargeable under salaries, must be levied in respect of any particular payment of salary at the rate applicable to the estimated income under salaries for the year in which the payment is made.²

Deduction at source of tax on interest on securities.— (See paragraph 39.) The only securities of the Government of India (other than income-tax free securities) from the interest on which income-tax is not deducted in advance are Treasury Bills.

As the person paying interest on securities has no information regarding the total income of the person to whom the payment is made, section 18 (3) provides that deductions of income-tax from "interest on securities" shall be made at the maximum rate fixed by the Finance Act. Where the total income of the person receiving the interest on securities is less than the income to which the maximum rate applies, he is entitled,

¹ I. T. Manual, para. 77, pages 221-22.

² Chalmers v. Government, A. I. R. 1924 Rang. 30 ; 1 I. T. C. 253.

under the provisions of section 48 (3), to claim a refund. In order to simplify the procedure in connection with refunds, section 18 (9) makes it obligatory upon the person deducting income-tax from the interest on securities to issue to all security-holders a certificate in the form prescribed in rule 13 or 13-A specifying the amount of tax deducted from the interest and the rate at which it has been deducted. The form of certificate attached to rule 13 is suitable for Government securities only, while that attached to rule 13-A provides for securities issued by local authorities and companies and covers the case of securities payable to bearer. It frequently happens, however, that security-holders hand over their securities and bonds to their bankers for collection. In that event the certificate given by the person deducting the income-tax from the security would be given to a bank for a whole block of securities. In such a case the Income-tax Officer should accept a certificate from the bank in the following form, and act upon it as if it were a certificate received direct from the persons deducting income-tax from the security :—

"We hereby certify that interest on the various securities specified on the back hereof was collected by us on behalf of _____ and that we received payment or were credited with the proceeds thereof (less income-tax) as stated on the other side amounting to Rs.

The securities specified are covered by certificates issued to the Bank under section 18 (9) of the Income-tax Act, 1922

Signature of Banker.

Address.

Date.

To be signed by the claimant.

I hereby declare that the securities on which interest as above specified has been received are my own property and were in the possession of _____ at the time when income-tax was deducted.

Signature.

Date.

(N.B.—The securities to be produced when required in support of any claim)

REVERSE OF FORM,
Schedule of Securities.

No. and description of securities.	Date of payment of interest after deduction of income-tax.	Period for which interest has been paid.	Amount of interest (less income tax)	Remarks.

A person who has other income liable to tax may, instead of claiming a refund, get the amount set off against the amount due from him in the assessment made on him under section 23 by filling up the form prescribed in rule 19.

The certificate under section 18 (9) must be taken by the Income-tax Officer of the area in which the claimant or assessee is assessed or resides (see rule 39) as conclusive evidence of the payment of the tax, both where a refund is claimed in cash and where a set-off against the tax assessed on other income is claimed.

While these arrangements will facilitate the making of refunds, it is desirable that refunds should be avoided as far as possible. There are, for example, certain institutions, authorities and funds, the income of which is exempt from tax under the provisions of section 4 (3). Similarly there are persons whose assessable income is less than Rs. 2,000 and who are not, therefore, liable to tax. There are other cases where the Income-tax Officer may be satisfied that the income of a holder of security while liable to tax is not likely to fluctuate so widely as to alter the rate appropriate to the total income. The Income-tax Officer must, in all proper cases, on application by the assessee, may issue a certificate authorising the person paying the interest on securities to make no deduction of tax or to deduct tax at a lower rate than the maximum. The certificates will be granted to residents outside British India by the Income-tax Officer, Non-residents Refund Circle, Bombay, and to others

by the Income-tax Officers concerned. Such a certificate might be in the following form :—

Income-tax Office, Dated 193 .

To

.....

.....

I hereby authorise (1)

.....
to deduct income-tax at the rate of (2) pies in the rupee when
paying the interest on the following securities to their present holder (3)
The authorisation will remain in force until cancelled by me.



Description of securities.

(1. Name and address of person paying the interest. (2) Rate of Income tax sanctioned. (3) Name of person receiving interest.

Income-tax Office.

Such certificate when issued should remain in force until they are cancelled and should not be required to be renewed annually.

The person, who should apply for exemption certificates in respect of interest on securities belonging to estates vested in the Administrator General or the Official Trustee, will be the same as the person who is entitled to claim a refund in respect of such securities as explained in paragraph 116 below.

When the owner of a security to whom a certificate is granted according to these instructions has endorsed the security to his bank for collection of interest, the officer responsible for paying the interest regards the bank as the real holder of the security and takes no cognisance of any arrangement that may have been entered into between the real owner of the security and the bank, with the result that the certificate standing in the name of the real owner of the security granted by the Income-tax Officer becomes inoperative. Again sometimes the collecting banks purchase securities on behalf of their constituents and hold these in their own names and do not endorse them in favour of their constituents who are the actual owners. In such cases the owners obtain exemption certificates from the Income-tax authorities on production of the bank's Safe Custody Receipts issued in their favour and other proofs if necessary. To avoid the possibility of paying officers refusing to act on the exemption certificate

in all such cases, Treasury Officers have been instructed to act on such certificates, when presented in respect of securities referred to above, if together with the exemption certificate a declaration by the bank is presented to the effect that the security continues to be the property of the person named as the owner in the exemption certificate.

Applications for refund of income-tax from residents of an Indian State who own securities whether of the Government of India, a local authority or a Company or hold shares in a Company in British India should, as in the case of residents outside India, be made to the Income tax Officer, Non-residents Refund Circle, Bombay. The Income-tax Officer will, however, allow a claimant who resides in an Indian State, the option of receiving payment of the refund through the Political Officer in that State, that is to say, the refund voucher that will be issued by the Income tax Officer will be made payable, if the person applying for the refund so desires, at the Political Treasury of the Government of India in the particular Indian State, or if there is no treasury under the control of the Political Officer, at the prescribed British Indian Treasury.¹

Securities held by Indian States or by Ruling Princes and Chiefs.—An Indian State is not assessable to any income-tax or super-tax except under the Government Trading Taxation Act, 1925 (III of 1926), that is to say, unless the State carries on a trade or business. Interest on securities held by Indian States is, therefore, not taxable. Interest on Government securities alone held by Ruling Princes or Chiefs as individuals, that is, not as the property of the State, is taxable under the law, but it has been exempted under section 60 of the Act. (Item No. 8 of paragraph 17). It is, therefore, no longer necessary that the authorities responsible for the payment of interest on Government securities should be supplied with information enabling them to discriminate between those that are the property of the State and those that are the property of the Ruler; but it is still necessary that such authorities before paying the interest without deducting income-tax should have evidence that the income-tax authorities are satisfied that the particular security in question is eligible to exemption on one or other of the grounds already mentioned. No such evidence is required where Government securities are held in the names of the Rulers of Indian States

¹ I. T. Manual, para. 78, pages 222-225.

in the special non-transferable form prescribed by Rule 38 of the Indian Securities Rules, 1920; but in other cases, a State or its Ruler claiming the payment of interest free of income-tax should forward a certificate that it is, or he is, the owner of the securities in question through the Political Agent, or Resident of the State (a) if the security is in the form of a stock certificate, to the Income-tax Officer within whose jurisdiction is situated the Public Debt Office which issued the stock certificate; (b) if the security is in the form of a promissory note or a bearer bond,—

(a) when the interest is payable at a Public Debt Office or a treasury in British India, to the Income-tax Officer within whose jurisdiction such Public Debt Office or treasury lies; and

(b) when the interest is payable at a treasury outside British India, to the Income-tax Officer, Non-residents Refund Circle, Bombay.

The Income-tax Officers mentioned will in turn grant exemption certificates in the form prescribed in paragraph 78. The exemption certificates will be issued in duplicate in regard to securities in the form of stock certificates or Promissory notes, one copy being sent to the State or the Ruler concerned and the other for purposes of registration direct in the case of stock certificates to the Public Debt Office of the domicile where the stock is registered and in the case of Promissory notes to the Public Debt Office or the Treasury Officer responsible for paying interest thereon.

As regards Bearer Bonds, the certificates will be issued in triplicate, the original being sent to the State or the Ruler concerned, the duplicate copy to the treasury responsible for payment of coupon relating thereto and the triplicate copy to the Public Debt Office within whose sphere such treasury is situated.

The exemption certificate pertaining to securities in the form of promissory notes or bearer bonds given to the State or the ruler concerned should be produced before the Public Debt Office or the treasury each time the promissory note or the coupon attached to the bearer bond is presented for payment of interest.

In the case of stock certificates or promissory notes, an exemption certificate will remain valid until either

- (a) it is cancelled by the Income-tax Officer, or
- (b) the security is transferred to some other person than the State or the Ruler in whose name it stood at the time when the certificate was issued, or
- (c) the security is changed from one form into another, e.g., from a stock certificate into promissory notes or bearer bonds or vice versa, or is renewed.

In the case of the bearer bonds, a fresh certificate will be required to cover each interest payment.

The above orders refer to Government securities only, the interest on which is exempt in the case of Indian States as well as Indian Princes or Chiefs as stated above. As regards other securities, viz., those of local authorities and companies referred to in section 8 of the Act, only Indian States are exempt. In order to have exemption certificates for such securities, the State concerned will similarly send a certificate stating that it is the owner of the securities for which exemption is claimed through its Political Agent or Resident to the Income-tax Officer within whose jurisdiction the Public Debt Office or the office of the local authority or company is situate and on receipt thereof that officer will grant an exemption certificate in accordance with the above directions sending a duplicate thereof at the same time to the authority empowered to pay interest on the securities concerned. Nothing in these instructions relates to dividends to companies.

The procedure laid down in the preceding paragraph may also be adopted in the case of interest not being "Interest on securities" which is liable to be taxed at source under section 18 (3B) when it is to be paid to an Indian State in respect of money belonging to it and when such income is not liable under the Government Trading Taxation Act, 1926 (III of 1926).

Refund of any tax already deducted at source which should not have been deducted under these instructions, will also be allowed by the

Income-tax Officer empowered to issue exemption certificates under these orders, provided that the claim therefor is presented within the period prescribed by section 50 of the Act, through the Political Agent or the Resident of the State concerned.

The position in regard to dividends received by a State from a company in British India in which it holds shares is entirely different from the position in regard to interest on securities held by a State. The interest in question is outside the scope of the Indian Income-tax Act altogether, and the period of limitation for claims to refunds deducted at source from such interest is therefore governed not by the provisions of that Act but by the ordinary law of limitation. On the other hand the profits of the Company are taxed as such, and are clearly within the scope of the Act. The fact that part of these profits will be paid by the Company to the State whose income as such cannot be taxed because it is not an individual, Hindu Undivided Family, Company, Firm or other association of individuals is immaterial. The tax is not paid by the Company on behalf of its shareholders. Any claim to refund can only arise not because the income was not *ab initio* liable to tax but in virtue of section 48 of the Act. No such claim on the part of a State could be admitted because a State cannot be either a British subject or the "subject of a State in India," see sub-section (5) of section 48. For similar reason the Ruler of a State could only be entitled to make a claim under section 48 of the Act if he were actually resident in British India.¹

Deduction of tax from interest other than interest on securities.—Before the passing of the Indian Income-tax (Second Amendment) Act, 1933 there was no provision in the Act for deduction of tax at source from any interest other than interest on securities. Section 18 of the Act as amended now provides for such deduction which is, however, restricted to payments made to non-residents alone. Where the Income-tax Officer has reason to believe that the total income of a non-resident, to whom such interest is paid, will in any year exceed the maximum which is not chargeable with super-tax, he may direct the person paying such interest to deduct income-tax and super-tax at the rate determined by him to be applicable to such non-resident's total income. Even if no such direction is made by the Income-tax Officer, the person paying interest to any person not known to be a resident is still under an obligation

¹ I. T. Manual, para 79, pages 227-228.

to deduct income-tax and super-tax if the amount of interest paid exceeds in the aggregate the maximum which is not chargeable with super-tax. In that case he must deduct income-tax on the entire amount at the rate applicable to it and super-tax on the amount by which such total exceeds maximum amount not chargeable with super-tax at the rate applicable to such excess. Failure to deduct such tax renders him liable to be treated as an assessee in default and to be prosecuted under section 51 (a). A penalty may also be imposed on him under section 46 (1) if the failure is wilful.

Deductions at source of tax on dividends declared by Joint Stock Companies.—It often happens that the holders of shares in Joint Stock Companies like the holders of securities authorise their bankers to collect dividends on their behalf. When they do so, it is the practice of the persons distributing the dividends to issue certificates under section 20 in the name of a bank for the whole block of shares held by the bank on behalf of its constituents so that it is not possible for an individual assessee for whom dividends are collected by his bankers to produce the certificate required by rule 14. The Income-tax Officer should ordinarily accept a certificate from a responsible officer of a bank in the following form and act upon it as if it were a certificate received direct from the person responsible for distributing dividends :—

We hereby certify that dividends on the various shares specified below were collected by us on behalf of.....and that we received payment or were credited with the proceeds thereof amounting to Rs.....

The dividends specified are covered by certificates issued to the Bank under section 20 of the Income-tax Act, 1922.

PERIAL BANK OF INDIA, DEPOSITORS' DEPARTMENT.

Calcutta,

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Superintendent.

Description of shares.	Holding.	Period.	Date of declaration of the dividends.	Date of receipt of dividends.	Amount of dividends.

To be signed by claimant.

I hereby declare that the shares on which dividends as above specified have been received are my own property, and were in the possession of the Imperial Bank of India, Calcutta, at the time when these dividends were realised.¹

Signature.

Date

Salaries and Interest on Securities and Deduction at the source.—There are doubtless some difficulties with reference to the tax on “salaries” and “Interest on Securities” which is payable by deduction at the source. If the Finance Act of any year imposes a tax upon the income of the previous year, then in these cases, the tax seems to be deducted before it is authorised or imposed. Section 18 says it is to be “leviable in advance by deduction at the time of payment.” The draftsman does not seem to be in sight of the difficulty. Leviable in advance of what? In advance of its imposition? The tax is to be deducted apparently at the rate laid down by the Current Finance Act. In respect of the income of this year the Finance Act of next year may impose quite different rates or (theoretically) no income-tax at all. Section 18 uses the words “in respect of income chargeable under the following heads: (i) Salaries and (ii) Interest on Securities.” When any Finance Act is passed it is too late to levy in advance income-tax “in respect of such income of the previous year.” What seems logically necessary is an addition to section 3 to make it read in effect: “Where any Act of the Indian Legislature enacts that

¹ I. T. Manual, para. 81, pages 228-229.

income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee.

(1) Tax at the 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, company, firm and Hindu undivided family.

(2) That at the rate shall be deducted in accordance with and subject to the provisions of this Act from all salaries payable in that year on account of the income-tax, if any, to become chargeable in respect thereof for the following year ; and

(3) Tax at the maximum rate shall be deducted in accordance with and subject to the provisions of this Act from all interest upon securities payable in that year on account of the income-tax, if any, to become chargeable in respect thereof for the following year.

Still however one may criticise the language of section 18, this is the only meaning which can be given to it, having regard to the language and the scheme of the Act.¹

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.

Payment in other cases.

P. 76

¹ Behari Lal Mullick v. The Commissioner of Income tax, 2 I. T. C. 328; A. I. R. 1927 Cal. 553.

19-A. 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 amounts 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.

Supply of information regarding dividends.

R. 42, 43.

P. 87.

This section was added by the Indian Income-tax (Amendment) Act XXIV of 1926. See notes under sections 22 (1) and 57 infra.

Rule 42. A return shall be furnished by the principal officer of a Company under section 19-A in respect of a dividend or aggregate dividends if the amount thereof exceeds Rs. 5,000.

Rule 42-A. A return shall be furnished by the person responsible for paying interest not being interest on securities in respect of amounts of interest or aggregate interest exceeding Rs. 1,000.¹

Rule 43. The return by the principal officer of a Company under section 19-A shall be in the following form and shall be delivered to the Income-tax Officer who assesses the company :—

Return under section 19-A of the Indian Income-tax Act, 1922, for the year 1st April 19 *31st March 19*

Name of Company.

Address of Company.

¹ I. T. Manual, Rule 42-A.

(1) Resident Shareholders/Non-Resident Shareholders.

Serial Number. 1	Name of Shareholder. 2	Address of share- holder. 3	Date of declara- tion of dividends. 4	(2) Amount of dividends.	
				Net. 5	Gross. 6
				Rs.	Rs.
				-	

I , the principal officer of the Company, hereby certify that the above statement contains a complete list of the resident/non-resident shareholders of the Company to whom a dividend or aggregate dividends exceeding Rs. 5,000 was or were distributed in the period from the 1st April 19 to the 31st March 19

Dated 19. .

Signature

Note 1.—Separate forms should be used for resident and non-resident shareholders.

Note 2 — Where dividends are issued "free of income-tax", the figure to be entered in column 5 is the sum actually paid, and the figure to be entered in column 6 is the aggregate of the sum so paid and the amount of income-tax payable by the Company in respect of the 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.

Certificate by
Company to share-
holders receiving
dividends.

P. 82, 116.

R. 14.

Rule 14. The certificate to be furnished by the principal officer of a company under section 20 shall be in the following form :—

P. 82.

(Name of Company)

(Address of Company)

Date.

Warrant for Rs. (in words and figures or, if the certificate is crossed by an entry in words stating that the amount of dividend is under the next multiple of Rs. 50 above that amount, in figures only) , being dividend at the rate of Rs. (in words and figures) per share for the /the period from to during the year ending on the day of 19 , on shares in this company, registered during the said period/on (Date) in the name of . This dividend was declared at the meeting held on the

193 .

I/We hereby certify that income-tax on the entire/such part as is liable to be charged to Indian Income-tax of the profits and gains of the Company, of which this dividend forms a part, has been, or will be duly paid by me/us to the Government of India.

Signature.

Office.

(To be signed by the claimant.)

I hereby certify that the dividend above mentioned relates to shares which were my own property at the time when the dividend was declared/

during the period from _____ to _____ /on (Date) _____ and
were in the possession of _____

Signature.

Date.¹

20-A. 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.

Supply of information regarding interest.

R. 43 A.

This section was inserted by the Indian Income-tax (Amendment) Act, XVIII of 1933.

Rule 43.A. The return under section 20-A shall be in the following form and shall be delivered to the Income-tax Officer in whose jurisdiction the person responsible for paying interest resides : —

Return under section 20-A of the Indian Income-tax Act, 1922, for the year 1st April 19 _____ to 31st March 19 _____ .

Name of payer.

Address of payer.

Serial No.	Name of payee.	Address of payee.	Date of payment.	Amount of interest or aggregate interest.

¹ I. T. Manual, Rule 14, pages 89-90.

I hereby certify that the above statement contains a complete list of persons to whom interest or aggregate interest exceeding Rs. 1,000 was paid during the period 1st April 19 to 31st March 19

Signature.

Certificate by a company to shareholders receiving dividends.—The profits of a company are charged to income-tax at the maximum rate irrespective of what the amount of the profits may be (see Finance Act), and the shareholder of a company, is under section 48 (1) of the Act, entitled to claim a refund on proof to the Income-tax Officer that the maximum rate income tax is greater than the rate applicable to his "total income". In order to get such a refund, he must produce the certificate required by section 20 and prescribed in rule 14.

Certificates should however be accepted if they supply all the prescribed particulars, even though they may not be identical in phraseology or arrangement with the statutory form of certificate given in Rule 14. The shareholders claiming refunds in respect of dividends paid out of profits of which a part is not liable to Indian income-tax, will only be able to enter approximate figures in the refund application, and in the return accompanying it, in respect of the amount of tax paid by the company on the dividends, and the amount of refund due; but this should not prejudice the claimants in any way. The Income-tax Officer will accept the certificate but will apply the correct percentage. Any certificate will be accepted that is otherwise in order if it shows either that the entire profits of the company are liable to Indian income-tax or that only part is liable irrespective of what the part may be. Duplicates of certificates should be accepted if the claimant satisfies the Income-tax Officer who has to sanction the refund that the dividends in respect of the tax on which the refund is claimed had actually been paid to the claimant, and if the Income-tax Officer has no reason to believe that a refund has already been granted in respect of the same dividends. Duplicates should not be accepted unless a convincing reason is given for not producing originals. Duplicates may be accepted, for example, if it is alleged that the originals have been lost and the Income-tax Officer has no reason to doubt the statement; on the other hand, duplicates should not be accepted if the originals can be produced though after some delay. As in the case of the certificate regarding tax deducted from interest on securities mentioned in paragraph 78, where a share-holder, in a company is assessed to income-tax on account

of income in his own hands, he may, instead of claiming a refund, ask that any rebate to which he is entitled should be set-off against the tax which he is personally liable to pay, and the form of return of income for individuals prescribed in rule 19 permits of this set-off.

The form of the certificate prescribed in rule 14 differs from the form of the certificate prescribed in rule 13 for income-tax deducted from interest on securities in that it simply contains a statement that income-tax has been or will be duly paid by the company and that the dividend was declared on a certain date. It contains no statement as to the rate at which tax has been or will be levied or as to the amount of tax paid or to be paid. The reason for this is that in many cases it is impossible to state at what rate tax has been or will be levied on the particular profits out of which dividends are paid. The dividends of a company may be distributed from profits made during the course of a financial or commercial year before the rate of tax is known, or may be distributed from reserves maintained for the equalisation of dividends and composed of profits earned in previous years. It should, therefore, be assumed by Income-tax Officers in connection with these particular certificates that tax has been levied in respect of the dividends at the rate current on the date on which the dividends were declared since this is the rate to be taken into account in dealing with a claim for a refund under section 49 (1).

The form of certificate also provides for cases such as that of the tea companies which do not pay income-tax on their entire profits and gains distributed as dividends.

The amount of income-tax so assumed to be payable by the company in respect of the dividend declared has, under the provisions of section 16 (2), to be added to the net dividend received in calculating the total income of the individual shareholder.

The following instructions may with advantage be followed by persons granting certificates prescribed by section 20 of the Act :—

- (1) The statutory form of certificate of deduction of income-tax prescribed by rule 14 of the Indian Income-tax Rules should invariably be used.
- (2) Either (a) the certificate should be printed on the same sheet of paper as the actual warrant with a line of perforation to

permit of its being detached, or (b) the dividend warrants should be machine-numbered, while every certificate relating to a particular dividend should be given the same number as the corresponding warrant. There are cases in which Banks collect dividends on behalf of their constituents and companies send the banks consolidated dividend warrants in payment of all the dividends due in respect of the block of shares for which the bank is acting, and at the same time send separate certificates for the shareholders by whom the shares are owned. In such a case if certificates are issued to a bank for say twenty constituents, relating to dividend warrant No. 1, the certificates should be numbered by hand 1-1, 1-2, 1-3 to 1-20.

- (3) The practice adopted by certain companies of either attaching red slips to the certificates drawing the attention of recipients to the need for their careful preservation for a year or two or of printing this caution in red ink on the face of the certificate may be generally followed.
- (4) A note should be printed on the certificate to the effect that shareholders may claim refund of tax under section 48 (1) of the Act in respect of their dividends if their personal rate of tax is less than the maximum rate.¹

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,

Annual return.
R. 15.
P. 8, 83.
R. 17.

¹ I. T. Manual. para 82, pages 230-232.

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.

Rule 15.—The returns for Government officers under section 21 of the Act shall be prepared and submitted to the Income-tax Officer by :—

- (a) Civil Audit Officers for all gazetted officers and others who draw their pay from audit offices on separate bills ; and also for all pensioners who draw their pensions from audit offices.
- (b) Treasury officers for all gazetted officers and others who draw their pay from treasuries on separate bills without counter-signature ; and also for all pensioners who draw their pensions from treasuries.

- (c) Heads of Civil or Military offices for all non-gazetted officers whose pay is drawn on establishment bills or on bills countersigned by the head of office.
- (d) Forest disbursing officers and Public Works Department disbursing officers in cases where direct payment from treasuries is not made, for themselves and their establishments.
- (e) Head postmasters (or (i) themselves, their gazetted subordinates and the establishments of which the establishment pay bills are prepared by them and (ii) gazetted supervising and controlling officers of whose headquarters post office they are in charge ; Head Record Clerks. Railway Mail Service, for themselves and all the staff whose pay is drawn in their establishment pay bills ; the Disbursing Officers in the case of the Administrative and the Audit offices.
- (f) Controllers of Military Accounts (including Divisional Military Supply, Marine, Field and War Controllers) for all gazetted military officers under their audit.
- (g) Disbursing Officers in the Military Works Department for themselves and their establishments.
- (h) Chief Accounts officers or Chief Auditors of Railways concerned for all railway employees under their audit.¹

Rule 16.—The minimum income under the head "Salaries" referred to in section 21 (a), shall be Rs. 1,000 per annum.²

Rule 17.—The return to be delivered to the Income-tax Officer under section 21 of the Act shall be in the following form :—

¹ I. T. Manual, Rule 15.

² I. T. Manual, Rule 16.

	1	Serial number.
	2	Name of person.
	3	Postal address or residence.
	4	Appointment or nature of employment.
	5	Total amount of salary, wages, annuity or pension paid during the year ending on 31st March 19 .
	6	House allowance or value of rent-free quarters.
	6-A	Amount of bonus, gratuity, fees, commission, perquisites, allowances other than those shown in column 6, profits in lieu of or in addition to salary or wages, and payments (repayments of the employee's own contributions and interest thereon being specified separately) from private Provident Funds not recognised under the Indian Income-tax Act, 1922—each to be shown separately.
	7	Total of columns 5, 6 and 6-A.
	8	Deduction on account of provident and other funds [proviso to section 7 (1)]
	8-A	Deduction on account of Life Insurance premia (section 15).
	9	Net amount chargeable.
	10	Amount of tax payable.
	11	Reduction under section 17.
	12	Amount of tax deducted.
	12-A	If the employee contributes to a recognised provident fund (Chapter IX-A) the amount of the employer's contribution thereto.
	13	Remarks.

I certify that the above statement contains a complete list of the total amounts paid by _____ to all persons who were receiving income on the 31st day of March 19 __, at the rate of Rs. 1,000 per annum, or have received during the year ended on that day not less than Rs. 1,000 in respect of salary, wages, annuity, pension, gratuity, fees, commission, perquisites, or profits in lieu of or in addition to salary or wages, and that all the particulars stated are correct.

Date¹

*Signature of person by whom
the return is delivered.*

Annual return of employees.—Under section 21 read with rules 15, 16 and 17 a return in the form prescribed in rule 17 must be made of all employees deriving an income of Rs. 1,000 per annum or over by the Government officers mentioned in rule 15, by every private employer and by, in the case of local authorities, companies or other public bodies or associations, the "principal officer" (see paragraph 7) "or the prescribed person." The provision that in the last mentioned case the return is to be made either by the principal officer or "the prescribed person" is designed to avoid difficulties experienced particularly in the case of companies, owing to the provision of the Act of 1918 which required that the return should always be made by the "principal officer." Where a company, for example, has got several places of business, it may be more convenient for the company that the returns under this section should be made not by the principal officer at the headquarters of the company but by officers at different branches, since this particular return has as a rule to be made to the local Income-tax Officer, i.e., to the Income-tax Officer of the place where the employees happen to reside. The liability for making this return remains under section 21 with the principal officer unless another person is prescribed in the case of particular companies. Such a person must be prescribed by means of a rule made by the Central Board of Revenue (see section 2 (10) and section 59 (2) (e)). The object of the return is to enable Income-tax Officers to see that the tax has been deducted at the source under section 18 (2), to arrange for adjustments where the collections at the source have not been made correctly and to assess "salaried" persons under section 23, whether the

¹ I. T. Manual, Rule 17.

tax has been collected at the source or not, where the salaried persons have other income than "salary."

This section prescribes that the return must be delivered to the Income-tax Officer but does not state to what particular Income-tax Officer the return should be made. Every Income-tax Officer has, under the provisions of section 64 (4), all powers conferred by or under the Act on an Income-tax Officer in respect of any income accruing or arising or received within the area for which he is appointed irrespective of whether the particular income is assessed by him or not. In most cases it is convenient that this return should be made to the Income-tax Officer of the area in which the employees reside, but in some cases it may be more convenient that the return should be made to the Income-tax Officer of the area in which the headquarters of a wide spread business is situated. It is for the Income-tax Commissioner in each doubtful case to decide to what particular Income tax Officer this return should be sent.

The return prescribed under this section is the return of all employees who during the period of 12 months ending 31st March last were in receipt of salary of not less than the prescribed amount of Rs. 1,000, and the return must be furnished to the Income tax Officer in the proper form before the 1st of May. The obligation to make this return is a statutory one and no preliminary notice or request from the Income tax Officer is required. Failure to furnish this return is punishable under section 51 (c) of the Act.¹

22. (1) The Principal officer of every company shall
 Return of income. **prepare, and, on or before the fifteenth**
 P. 11, 84, 86, 87. **day of June in each year, furnish to the**
 R. 18. **Income tax Officer a return, in the pres-**
cribed 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.

¹ I. T Manual, para. 83, pages 232-233.

(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 P. 86. (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 P. 88, 111. 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.

Rule 18. (1) The return of total income of companies required under section 22 (1) shall be in the following form and shall be accompanied by a copy of the profit and loss account referred to therein :—

Total income of the company.

Income, profits, or gains as per profit and loss account for the year ended 19

Add—Any amount debited in the accounts in respect of—

1. Reserve for bad debts	...	...	...	...
2. Sums carried to reserve for provident or other funds				...
3. Expenditure of the nature of charity or presents	...			...
4. Expenditure of the nature of capital	...			...
5. Income-tax or Super-tax	...			...
6. Rental value of property owned and occupied	...			...
7. Cost of additions to, or alteration, extensions, improvements of, any of the assets of the business	...			...
8. Interest on reserve or other funds	...			...
9. Losses sustained in former years	...			...
10. Losses recoverable under an insurance or contract of indemnity				...
11. Depreciation of any of the assets of the company	...			...
12. Expenses not incurred solely for the purpose of earning the profits	...			...

Total Rs.

Deduct.—Any profits or income included in the accounts on account of—

(a) Interest (net amount) on securities taxed at source	...	...	...
(b) Interest on securities tax-free	...	...	...
(c) Dividends (net amount) from companies taxed in British India...			...
(d) Other items already taxed at source (specify details)			...

Balance Rs.

If the company owns any property not occupied for the purposes of the business, a statement in the form prescribed in Schedule A to rule 19 should be attached with particulars of the credit and debit on account of such property entered in the accounts.

Declaration.

I, the [Secretary, etc., (see section 2 (12)
of the Act]) of the (name of company) declare that
the information against each head in this return is correctly given as
shown in the books of the Company as also in the accounts which have

been duly audited by the auditors of the Company and which have been adopted by the shareholders of the Company.

(Signature)

(Designation)

Dated 19 .

(2) The company shall also attach to the return a statement showing the sums charged in the accounts under the provisions of section 58-K (2).¹

Rule 19.—The return of total income for individuals, firms, Hindu undivided families and other associations of individuals not being companies required under section 22(2) shall be in the following form :—

Statement of total income during the previous year.

1 Sources of Income	2 Amount of profits or gains or income during the previous year.	3 Tax already charged on the income.
	Rs.	Rs.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites including rent-free quarters), or profits received in lieu of, or in addition to salary or wages... (See note (1))		
1-A. The contributions made by an employer to the account in a recognised provident fund of the person making the return		
1-B. The interest accruing to the account mentioned in 1-A which is not exempt from income-tax (section 58-F (2))...		
1-C. Interest accruing to the account mentioned in 1-A, which is exempt from income-tax (section 58-F (2))		
2. Interest on securities (including debentures) already taxed (See note (2))		

¹ I. T. Manual, Rule 18.

Statement of total income during the previous year—Contd.

1	2	3
Sources of Income.	Amount of profits or gains or income during the previous year.	Tax already charged on the income.
	Rs.	Rs.
3. Interest on securities of the Government of India or of local Governments declared to be income-tax free ... (See note (3))		
4. Property as shown in detail in Schedule A ... (See note (4))		
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5) ... (See note (5))		
6. Profession ... (See note (6))		
7. Dividends from companies (net) ... (See note (7))		
8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not bearing income from business ...		
9. Ground rent ...		
10. Any source other than those mentioned above including any income earned in partnership with others ... (See note (8))		
Total ...		
Deductions claimed—		
(a) on account of insurance premia ...		
(b) on account of contributions to a provident fund to which the Provident Funds Act applies ...		
(c) on account of contributions to a recognised provident fund (section 58-A (a))		
(d) on account of interest on contributions to a recognised provident fund and accumulations thereof which is exempt from income-tax (section 58-F (2)) ...		
(e) others ...		

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended _____ and that no other income accrued or arose or was received by me / the firm / the family / the association during the said year and that I / the firm / the family / the association had during the said year no other sources of income.

Date

Signature.

N.B.—(a) Income accruing to you outside British India received in British India is liable to taxation, and must be entered by you in the form.

(b) All income from whatever source derived must be entered in the form, including income received by you as a partner of a firm.

Note 1.—In column 2 should be shown the gross amount of salary and not the net amount after deduction on account of income-tax, provident funds, etc.

Note 2.—“Interest on securities” means the interest on promissory notes or bonds issued by the Government of India or a local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term “interest on securities” does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 8.

The interest on securities of the Government of India or of local Governments declared to be income-tax free should be shown under head 3. Those which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificate issued by the person or Company paying the interest under section 18 (9) of the Act.

Note 3—(a). The income-tax payable on the interest receivable on a security of a local Government issued income-tax free is payable by the local Government and not by the holder of the security.

(b) Only the interest on securities of Government of India or of a local Government declared to be income-tax free should be entered against this head. Such interest will not be charged to income-tax, but it must be included in the statement of total income in order to ascertain the rate of income-tax chargeable on other income. It is chargeable to super-tax.

(c) Particulars of any interest on securities issued by other authorities and stated to be free of income-tax should be entered against head 2, as income-tax on such interest is actually paid by these authorities on behalf of the recipients.

Note 4.—The tax is payable under this head in respect of the bona fide annual value of any buildings or lands appurtenant thereto of which you are the owner, other than such portions of such buildings and lands as you may occupy for the purpose of your business.

SCHEDULE A.

1	Serial number.
2	Name of village or town where the property is situated.
3	Name of mohalla or street and number of property, if any.
4	In the case of Municipalities the name of the person in whose name the property stands in the municipal registers.
5	Where the property is occupied by owner or is let.
6	Annual letting value of the property.
6-A	Period during which the property remained vacant.
7	Amount of rent actually received for the property, if let.
8	Of one-sixth of the annual letting value shown in column 6.
9	Premium paid to insure the property against damage or destruction.
10	Interest on a mortgage or charge on the property.
11	Ground rent paid for the property.
12	Land revenue paid for the property.
13	Collection charges paid.
13-A	Amount claimed on account of property remaining vacant.
14	Total of columns 8 to 13 A.
15	Net amount to be carried over to the front of the form.

Deductions.

Note 5.—(a) Where you keep your accounts on the mercantile accountancy or book profits system, you must file return in the following form:—

<i>Income, profits or gains from business, trade, commerce.</i>	Rs.
Income, profits or gains as per Profit and Loss Account for the year ended 19	
Add.—Any amount debited in the accounts in respect of—	
1. Reserve for bad debts
2. Sums carried to reserve for provident or other funds
3. Expenditure of the nature of charity or presents
4. Expenditure of the nature of capital
5. Income-tax or super-tax
6. Drawings or salary of proprietor, drawings of partners and salary of partners
7. Rental value of property owned and occupied
8. Cost of additions to, or alterations, extensions, improvements of any of the assets of the business
9. Interest on the proprietor's or partner's capital including interest on reserve, or other funds
10. Losses sustained in former years
11. Losses recoverable under an insurance or contract of indemnity
12. Depreciation of any of the assets of the business
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits
Total	_____
Deduct.—Any profits included in the account already charged to Indian income-tax and the interest on securities of the Government of India or of Local Governments declared to be income-tax free	
Balance	_____

Signature of the person making the return.

Date

State here amount of salary paid to a partner and not added back on the ground that it is not an appropriation of profit Rs.

(b) Where you do not keep your accounts on the mercantile accountancy or book profits system, but on a cash basis, you must file a statement showing how you arrive

at the taxable profits, i.e., showing details of the gross receipts and of the expenditure you propose to set against those receipts specifying separately salary paid to partners and deducted from gross receipts as not being an appropriation of profits. No deductions are permissible on account of—

- (i) Property owned and occupied by the owner of a business for the purposes of a business ;
- (ii) Additions to or alterations, extensions or improvements of any of the assets of the business ;
- (iii) Interest on the capital of the proprietors or partners of the business ;
- (iv) Bad debts not actually written off in the accounts ;
- (v) Losses sustained in previous years ;
- (vi) Reserves of any kind ;
- (vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business ;
- (viii) Any expenditure of the nature of charity or a present ;
- (ix) Any expenditure of the nature of capital ;
- (x) Any loss recoverable under an insurance or a contract of indemnity ;
- (xi) Depreciation of any kind other than that specified in the Act ;
- (xii) Drawings or salary of proprietor, drawings of partners and salary of partners if it be an appropriation of profits ;
- (xviii) Private or personal expenses of the assessee ;
- (xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

(c) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58-K (2).

Note 6.—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

Note 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends received by shareholders represent the net amount remaining after any income-tax due by the company has been paid. This amount should be

entered in column 2 of the statement. The proportionate tax will be added in the income-tax office.

If the rate of tax applicable to your total income is less than the rate of tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.

Note 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head or under income from business according to circumstances.

Note 9.—Deductions from total income can only be made for insurance premia in respect of insurance on your own life or on the life of your wife, or in respect of a contract for a deferred annuity on your own life or on the life of your wife. No deduction is permissible in the case of any other form of insurance except in the case of Hindu undivided families where deductions are permissible on account of premia paid in respect of insurance on the life of any male member of the family or of his wife. The original receipt or the certificate of the insurance company to which the premium was paid must be attached to the return.¹

For the meaning of the word total income, see also notes to sections 2 (15), 3, 15 (3), 16 (1), 17 supra and 23 (1) and (3), 48, 51, and 55 infra.

Return of income by companies.—The return of the total income of a company must be furnished to the Income-tax Officer before the 15th day of June in each year in the form prescribed in rule 18, which also contains the form of the verification of such return. The obligation to make this return is a statutory obligation upon the "principal officer" (see paragraph 7) of the company, and it is not necessary that the Income-tax Officer should send any preliminary notice or request to the company or the principal officer concerned. Failure to furnish this return is punishable under section 51(c) of the Act.²

The word company includes a company in liquidation and a liquidator appointed under the Indian Companies Act is not exempt from making a return on business managed by him for the beneficial winding up of the company, and

¹ I. T. Manual, Rule 19.

² I. T. Manual, para. 84, page 233.

there is no difficulty in the way of Income-tax authorities in calling upon the official liquidator to furnish a return in accordance with section 22 (1).¹

Return of income by persons other than companies.—The form of return of total income of individuals, firms or Hindu undivided families is prescribed in rule 19 which also prescribes the form of verification of such return. In this case no statutory obligation rests upon the individual, firm or Hindu undivided family to make such a return until a notice has first been served by the Income-tax Officer requiring such a return. The notice must allow a period of 30 days for the furnishing of the return. The only exception to this rule relates to the assessment of persons who are likely to leave India before the close of the financial year and are not likely to return. In such cases it will be sufficient if a period of not less than seven days is allowed to make the return. If, however, on receipt of such notice, the return is not furnished within due time, such failure to make a return is punishable under section 51 (c) of the Act.

An Income-tax return is not a "public document" and therefore no one has any right to inspect or to receive a copy of it. The following persons should, however, in practice be allowed to do so : —

- (a) in any case the person who actually made the return ;
- (b) any partner (known to be such) in a firm registered or un-registered to whose income the return relates ; and
- (c) the manager of a Hindu undivided family to whose income the return relates, or any other adult member of such family who has been treated as representing it, that is, on whom a notice or requisition has been served under section 63 of the Act.

A return under section 22 on which the word "loss" has been written, without any figures or in which 'nil' has been entered against

¹ Commissioner of Income-tax v. the Official Liquidators, Agra Spinning and Weaving Mills Co. Ltd., (in Liquidation), 1934 I. T. L. J. page 10 ; 1934 A. L. J. 221 ; 56 All. 685 ; A. I. R. 1934 All. 170.

each item, is not a valid return (cf. Calcutta High Court case *Ram Kissen-das Bagri versus Commissioner of Income-tax, Bengal, II*, Srinivasan's Tax Cases, page 324). If, therefore, such a return is filed by any person, the Income-tax Officer can proceed after issuing a notice under section 22 (4), and making enquiries to assess him under section 23 (4) if he finds that such a course is justifiable.¹

Under section 22 (2) the Income-tax Officer must give the proposed assessee at least thirty days' time within which to file a return. If this minimum is denied the notice becomes entirely illegal and no subsequent extension of time will cure the defect that initially lay in the notice issued.²

Persons carrying on business at different places.—It is not necessary to issue separate notices under section 22 (2) requiring separate returns for each branch, of an assessee's business carried on in different places. An income-tax Officer of an assessee's principal place of business has jurisdiction to compel such assessee to submit a return and produce accounts in respect of a branch business even though he has submitted a return and otherwise complied with all the requirements of the law before the Income-tax Officer of the place where he had such a branch business.³

Non-residents—Notice to.—A notice may be given under this section to persons liable to tax but residing outside the territorial limits of the officer issuing the notice. Such notice

¹ I. T. Manual, para. 85, pages 233-34.

² *Kajori Mal Kalyan Mal v. Commissioner of Income-tax, U. P.*, A. I. R. 1930 All. 209; 1930 A. L. J. 78; *Jamnadas & Co.*, 8 I. T. L. J., page 242.

³ *In re Lachman Prasad Babu Ram*, A. I. R. 1930 All. 49 F. B.; 1930 A. L. J. F. B.

may be sent by post under section 63 (1) and Order 5, Rule 25, C. P. C. Service of a notice by post on a non-resident foreigner was held to be a proper service and failure to comply with its terms to justify an *ex parte* assessment.¹

Incapacitated Persons.—Notice may be served on the guardian of a minor or an idiot or a lunatic, or on a trustee in case of a trust. Such guardian or trustee is liable to make a return.

Form of return.—Statutory rule 19 which embodies the form of return to be submitted by the assessee has the same force as a section of the Act and a return which completely ignores the provisions cannot be considered any return.² But where the return has been filed in such a manner as to substantially comply with the requirements of rule 19, the validity of the return will not be affected simply because the provisions of the form have not been strictly complied with. A merchant sent a letter to the Income-tax Officer stating that he had made a mistake in the figures supplied by him. Attached to this letter was the statement of income in Hindi. Along with this letter and the enclosure, the merchant sent one of the printed forms in Hindi in which an assessee is required to make an assessment of his income, and in his letter suggested that the Income-tax Officer might enter the figures contained in the enclosure into the blank form and substitute the fresh return in place of a former return made by him. It was held that the letter and its enclosure and the blank

¹ The Commissioner of Inland Revenue v. Brodie's Executors, 8 T. C. 466; Whitway v. The Commissioner of Inland Revenue, 10 T. C. 88 at 110; A. I. R. 1927 Lahore 5.

² Commissioner of Income-tax v. A. R. A. N. Chettiyar Firm, A. I. R. 1928 Rang. 108 F. B.

form sent by the merchant did substantially amount to the making of a return.¹ But where the entries in columns 2 and 3 were qualified by the word "about" and the return omitted to mention the period to which the income related, and the particulars required by note 5, it was held that the return was invalid.² The question whether a return is a valid return or not is a question of law.³

Return must be verified.—The return must be verified either by the assessee himself or by his duly authorized agent or representative. A return signed by one of the partners of a firm, by the head of a joint Hindu family, or by the principal officer of a company is perfectly valid. A return signed and verified by an unauthorized agent is invalid, and the defect is not cured by the assessee subsequently authorizing him to produce account books. A Mukhnama-Am which authorizes an agent to act on his behalf in the various courts and offices clearly mentioned there but does not clearly authorize the agent to sign and verify the income-tax returns, or even to represent the principal before the Income-tax authorities, cannot be interpreted to authorize the agent to sign and verify income-tax returns, and the words conferring a general authority to act "in other Government Departments" do not cover the case of Income-tax returns. There can be no agency by estoppel and the fact that the one individual signed and

¹ Gangasager v. Emperor, A. I. R. 1929 All. 919; 1930 A. L. J. 25.

² Lal Mohamad Sardar Mohammad, 8 I. T. L. J. 201; 7 I. T. C. 317.

Gulli Chand Tulshi Das v. Commissioner of Income-tax, A. I. R. 1929 Lahore 246.

verified the return for the assessee in previous years will not make him a duly authorized agent for the purpose. It is the duty of Income-tax Officers before they accept a return signed and verified by agents, to satisfy themselves about the authority of the agent to do so.¹

Blank or Improperly filled Return.—A return which deliberately fails to comply with the requirements of law² or is not accompanied by the details required by rule 19³ cannot be held to be valid return. Similarly, where notice was given to an assessee with a prescribed form to be filled in, but he returned it leaving columns blank, with a remark that he was a sleeping partner without control of business and was not in possession of accounts, time was extended for filling up the form, but the assessee finally intimated that neither information nor accounts were available, the return was held to be invalid.⁴ Where an assessee sends a return unsigned and unverified and failed to submit accounts in obedience to a notice under section 22 (+), the I. T. O. is entitled to make an assessment to the best of his judgment.⁵

A simple letter denying liability to tax is no return.⁶

¹ Mohammad Mehdi v. Commissioner of Income tax, U. P., 9 I. T. L. J. page 153, 1935.

² 1933 A. L. J. 49.

³ Ratan Chand Dunni Chand, A. I. R. 1928 Lahore 729 and 944; *In re* Chetiar Firm, A. I. R. 1928 Rang. 108; A. I. R. 1929 Pat. 400; A. I. R. 1929 Rang. 38 F. B.; A. I. R. 1928 All. 283.

⁴ *In re* Bir Bhan, A. I. R. 1933 Lah. 290.

⁵ A. I. R. 1934 All. 929; A. W. R. 1934, 188.

⁶ A. I. R. 1931 Pat. 282.

A return which is invalid cannot be treated even for sustaining a conviction under section 52 for making a false return.¹

A return which is based on mere guess is no return.² But the Income-tax authorities are to administer the law in a sympathetic spirit. In cases where there is no attempt at concealment, but the return is incomplete on account of ignorance or it may be through inadvertance, the assessee should be given an opportunity of rectifying the defect. Thus where an assessee through ighorance filed a blank return but accompanied by a profit and loss statement, it was held that a summary statement was not justified.³ So where a return is filed out of time but before the assessment is made, it should be considered as if it was made within time.⁴

Notice.—Personal service of a notice on an assessee is not required. It is enough if the notice is served on a recognized agent of the assessee.⁵ So is a notice sent by registered post and delivered to the assessee's son who though a minor, was yet of such age and intelligence as to understand what it was about, was held to be sufficient notice to the assessee.⁶

But where an assessee files a return without a notice under section 22 (2) being served, it is not a return required by law, and as such no prosecution can be maintained in

¹ A. I. R. 1933 Nag. 290.

² Mohan Lal v. Hardeo Das, 5 I. T. C. 128.

³ *In re* Ganga Sagar, A. I. R. 1929 Cal. 219.

⁴ A. I. R. 1932 C. 410 F. B.

⁵ A. I. R. 1931 Pat. 282.

⁶ A. I. R. 1932 All. 374; 1932 A. L. J. 409.

respect of such return under section 177, I. P. C., as section 22 (2) is mandatory.¹

Form of Notice.—No particular form is prescribed for a notice requiring the filing of a return. The notice is only to state that the assessee is to file a return within 30 days. The notice must give at least 30 days to the assessee. It may give more. But if minimum of time is not given, the notice is bad, and no subsequent extension of time can cure the defect.² An illegal notice does not make the return due. There can be no question of waiver of notice. Where the jurisdiction of Income-tax Officer is taken away and vested in the Assistant Commissioner, a notice issued by the former is not legal.³

Time for issue of notice.—The Income-tax Act only provides the procedure for determining the taxable income and the method of realisation of the tax when levied. The rate of tax is fixed year after year by the Finance Act of the year. It seems therefore that until the Finance Act of any particular year is passed, liability to tax does not arise and no notice to file a return of income can be issued. But there is nothing illegal in the issue of notices requiring the filing of returns of income in anticipation of the Finance Act.

Voluntary Return.—No one but a company is bound to make a return until a valid notice is served on him requiring him to do so. But if an individual files a return voluntarily without a notice being served on him the return

¹ Hari Chand v. Emperor, 8 I. T. L. J. page 167; Punjab Law Reporter 1934 page 544; A. I. R. 1934 Lahore 626.

² Kajjarimal Kalyan Das, A. I. R. 1930 All. 209; 1930 A. L. J. 78.

³ A. I. R. 1932 Nag. 65.

does not become invalid only for want of notice requiring him to do so, and the assessee will not be allowed to challenge the validity of any order passed consequent on such voluntary return on the ground that he was not bound in law to file the return which he filed of his own accord.¹

Consequences of failure to furnish a return.—Where a return is not furnished in due time, whether it be a statutory return which companies are required to furnish by the 15th of June under section 22 (1), or whether it be the return which other persons are required to furnish under section 22 (2) on receipt of a notice from the Income-tax Officer calling upon them to do so, the person failing to make the return is not only liable to be prosecuted under section 51 (c), but no appeal lies under the proviso to section 30 (1) of the Act against any assessment made by the Income-tax Officer upon the company or other person failing to make a return. In the case of a registered firm, the Income-tax Officer may also cancel its registration but not until 14 days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to do so.

Failure to make a return, therefore, deprives the person at fault of any remedy whatsoever against the assessment subsequently made, except the remedy specified in section 27. Under that section a person failing to make a return may, within one month after the receipt of a notice of demand of the tax, apply to the Income-tax Officer, and if he satisfies him that he was prevented by sufficient cause from making the return, the Income-tax Officer shall cancel the assessment, refund any tax already paid at once without waiting for an application for refund from the assessee, and proceed with the case *de novo*. Should the Income-tax Officer refuse to re-open the case under section 27, the assessee may appeal under section 30 to the Assistant Commissioner, but if the Income-tax Officer does re-open the case, whether of his own accord on an application under section 27 or under the orders of the Assistant Commissioner under section 31 on an appeal, and the assessee fails again to make a return, the same provisions apply and no appeal lies against the assessment.

¹ Gulichand Tulshidas, A. I. R. 1929 Lahore 246; 118 I. C. 535.

Section 22 (2) makes it obligatory upon the Income-tax Officer to call for returns from all assesseees, and as the success of the administration of the Act is largely dependent upon assesseees making returns of their income, every effort should be made to get every assessee to file a return. At the same time it is desirable that, with due regard to the fiscal interests of the Government, all income-tax officials should administer the Act in a sympathetic spirit, and in particular should give assistance to assesseees if they find any difficulty in filling up their returns.

Sub-section (3) of section 22 is a new provision the effect of which is that where a person has not furnished a return in due time of having furnished a return discovers any omission or wrong statement therein, he may furnish a return or a revised return before the order of assessment is passed so that where such a return or revised return has been made the assessee may not be prosecuted for failing to submit a return in due time under section 51 (c) and may not be penalised under section 28 for making a wrong statement in the original return.¹

A return filed by an assessee before the assessment should be considered although filed after the time prescribed.² Where an assessee's return is made before assessment, it is a return made in due time and before such a return be disregarded under section 23 (2), the assessee is entitled to a reasonable notice to produce any evidence upon which he might rely in support of his return.³

Revised Return.—Sub-section (3) of section 21 has been added to give an opportunity to an assessee who has either not filed a return, or having filed a return discovers some mistake or omission in it. Under this new sub-section an assessee can escape the penalties consequent on his

¹ I. T. Manual, para 86, pages 234-235.

² *Partap Chandra Ganguly v. Commissioner of Income-tax*, A. I. R. 1932 Cal. 410.

³ *In re Messrs. Sadaram Puranchand*, A. I. R. 1931 Cal. 729 S. B.

failure to file a return or of having filed a false or incorrect or incomplete return.¹ But this sub-section applies only to bona fide mistakes.² But where an assessee files a deliberately false return dishonestly, there can be question of any discovery under this sub-section,³ and the I. T. O. is entitled to look into the former return and impose penalty.⁴

Where a return or a valid revised return is made before an assessment under section 23 (4), it should be treated as a return made in time, and fresh notice under section 22 (2) should be issued. Non-compliance with a notice under section 22 (2) issued prior to the filing of such return cannot be a ground for assessment under section 23 (4).⁵

Production of accounts.—Under sub-section (4) of section 22 the Income-tax Officer is empowered to call upon any person liable to make a return to produce such accounts or documents as he may require. It does not, however, empower him to ask the assessee to prepare accounts like a profit and loss account which they do not already possess and do not require for their own purposes; all that it empowers the Income-tax Officer to do is to call for accounts and documents which are, or are believed to be, in existence. The production of accounts may be called for whether a return has or has not been made. As stated in paragraph 86, it is always desirable in the interests both of the assessee and of the Government that Income-tax Officers should obtain a return of income before they make an assessment. If, however, such returns are not forthcoming, they should so far as possible, obtain the accounts of the assessee. Again, if a return is made the Income-tax Officer has power to call for accounts wherever he considers it necessary for the purpose of

¹ A. I. R. 1932 Mad. 433.

² *In re* Pratap Chandra Gangauli, A. I. R. 1932 Cal. 410.

³ A. I. R. 1932 Mad. 1161 F. B.

⁴ *In re* Arunachalam Chettiar, 138 I. C. 291.

⁵ Sadaram Puran Chand, A. I. R. 1931 Cal. 729.

testing the accuracy of the return. It is, however, desirable that the least possible inconvenience should be given to assesseees by the detention of their accounts by Income-tax Officers and Income-tax Commissioners should take steps to see that accounts are not detained for any undue time or for any unnecessary purpose. Steps should be taken to secure that the services of competent and reliable Accountants where employed by assesseees should be utilized to the fullest extent by the Income-tax Officers. The latter from their experience should soon know what particular Auditors can be relied upon to give accurate figures. Where a statement of profit and loss filed by an assessee has been certified as correct and complete by such an Accountant, the Income-tax Officers should, unless they see reason to the contrary, accept the statement as correct and complete with regard to the facts mentioned in it, although he will frequently have to call for details showing how various figures are made up. But in such cases the Accountant himself when authorised by the assessee to appear on his behalf should be asked to supply the details. Income-tax Commissioners should take steps to secure that the services of such Accountants are fully availed of.

The proviso to sub-section (4) of section 22 prevents any Income-tax Officer from calling upon an assessee to produce books of account going back for a period of more than three years prior to the "accounting period". This limitation applies merely to books of account; it does not apply to documents. No limitation is placed by the Act upon the power of the Income-tax Officer to call for documents of any date.

Neglect to furnish accounts or documents asked for by the Income-tax Officer under section 22 (4) is punishable under section 51 (d) and, further, under the provisions of section 23 (4) read with section 30 (1), any person who fails to comply with the requisition of the Income-tax Officer for the production of accounts or documents may not appeal under section 30 against the assessment made whether he has made a return or not. If the assessee is a registered firm the Income-tax Officer may cancel its registration. He is in exactly the same position as a person who did not make a return in the first instance, his only remedy being that described in paragraph 86 (i.e., under section 27). (See also notes to section 42 *infra*.)¹

¹ I. T. Manual, para. 88, pages 236-237.

Discontinued Firm.—When a firm ceases to do active business but there is ample evidence that the partners are meeting together, passing resolutions, and describing the company as a going concern and from the resolutions it is shown that although the business had been discontinued, the partnership had not been dissolved, it was held that there was a firm in existence against which proceedings could be taken for assessment of tax under this section and section 23.¹

Adjournment.—Although the Act does not specially provide for the granting of adjournments to comply with the terms of the notices under sections 22 (4) and 23 (2), yet in practice adjournments are generally allowed for sufficient cause on the principles of justice, equity, and good conscience. Failure on the part of income-tax officers in observing the aforesaid elementary principle of judicial procedure does considerably detract from the technical legality of the summary assessment order passed by him.²

Combined notice under section 22 (4) and 23 (2).—A combined notice under sections 22 (4) and 23 (2) is not illegal. But the issue of a combined notice under section 22 (4) and 23 (2) presupposes the existence of a valid return having been made. In such a case the I. T. O. would be deemed to have treated the return made by the assessee as valid and he cannot hold the return as no return at the last stage of assessment proceedings.³

Notice under section 22 (4).—It has been held by Patna High Court that the notice under section 22 (4) is

¹ A. I. R. 1934 Mad. 545 a; 1934 M. W. N. 775 F. B.

² A. I. R. 1934 Nag. 207; A. I. R. 1934 Nag. 183 (2).

³ A. I. R. 1934 Nag. 207; A. I. R. 1934 Nag. 183 (2); A. I. R. 1928 Cal. 587.

concerned only with the stage before the filing of the return.¹ In a subsequent case the Allahabad High Court questioning the Patna Case, held that there is nothing to justify the view that a notice under section 22 (4) can only be issued to a person who has not made a return and that it is given after a return has been filed, such a notice is illegal. It was held it is perfectly lawful to combine the two notices under section 22 (4) and 23 (2).

An assessee filed a return of his income stating that he kept no accounts and that his return was an estimate, whereupon the I. T. O., presumably having reason to think that the assessee was not giving due attention to his return, served a double notice upon him, one under section 22 (4) requiring him to produce accounts and documents in support of his return, and another under section 23 (2), requiring him either to attend or to produce evidence in support of his return. The assessee complied with the notice under section 23, but did not comply with the part of the notice under section 22 (4) requiring him to produce accounts. He admitted that he did keep some sort of accounts, but contended that the said accounts were not clearly kept and were not fit to be relied on. It was held that the assessee is not the sole judge of the worth of the accounts, and that what an assessee is required to produce are not what are considered clean and perfect accounts, but only such accounts as he has, and failure to produce such accounts justified an assessment under section 23 (4).²

¹ A. I. R. 1927 Pat, 390.

² *In re* Chandra Sen Jaini, A. I. R. 1928 All. 283; see also A. I. R. 1932 Cal. 411 F. B.; A. I. R. 1933 All. 759; A. I. R. 1933 All. 541; 1933 A. L. J. 1474.

In another case, the Lahore High Court held that where an inquiry under section 23 (3) has already begun, an assessment under section 23 (4) shall not be made for subsequent default by issuing a notice under section 22 (4).¹

A full Bench of Rangoon High Court has recently held that an Income-tax Officer after proceeding under section 23 (2) can make an assessment under section 23 (4), for default in respect of a notice under section 22 (4), committed prior to the proceedings under section 23 (2).²

An assessee is required to produce all account books in response to a notice under section 22 (4). Failure to produce all the account books entitles the Income-tax Officer to proceed under section 23 (4).³

In a subsequent case the Patna High Court also held that a notice under section 22 (4) can be given even after the filing of the return.⁴ Also it was held that where the assessee failed to produce accounts which are in existence, an assessment under section 23 (4) is justified.⁵

The Madras High Court has held that a notice under section 22 (4) can be given although the assessee has filed a return and complied with a notice under section 23 (2).⁶

¹ A. I. R. 1928 Lahore 219.

² *In re Messrs. Mangaldas Oranjivan & Co.*, 1935 I. T. L. J. page 95.

³ A. I. R. 1931 Lahore 87.

⁴ A. I. R. 1928 Pat. 529 F. B.

⁵ A. I. R. 1930 Pat. 127.

⁶ A. I. R. 1929 Mad. 60 F. B.

Assessment by one I. T. O.—Reopening by another.—The assessment made by one I. T. O. can be re-opened by his successor, though it should not be done arbitrarily.¹

Accounts of a Branch Shop.—A notice to produce accounts and documents in connection with assessee's branch shop is perfectly legal.²

The I. T. O. can even require an agent of a non-resident firm to produce account-books kept outside British India.³

Meaning of the word "require."—The word require used in section 22 (4) really means require as a piece of relevant evidence. Where the assessee produced some only of the account-books, but gave the necessary data for the assessment, and it was shown that the non-production of the books that were withheld did not affect the taxable income, it was held that the assessment should be under section 23 (3) and not 23 (4).⁴

Sufficient cause—Question of fact.—The question about the sufficiency of cause or reason for failure to submit a return under section 22 (2) is a question of fact.⁵

The question of reasonableness of time allowed under section 22 (+) is a question of fact.⁶

¹ A. I. R. 1930 Lahore 605.

² A. I. R. 1930 All. 49 F. B. ; 1930 A. L. J. 1 ; A. I. R. 1927 Lahore 5.

³ A. I. R. 1930 Rang. 10.

⁴ *In re Ganga Sagar of Khurja*, 1931 A. L. J. 345 ; A. I. R. 1931 All. 417.

⁵ A. I. R. 1932 Pat. 166. *Keshodeo Chamaria v. Commissioner of I. T., Bengal*, I. T. L. J. 1935, page 452.

⁶ A. I. R. 1931 Cal. 729.

Service of notice on agent.—The service of a notice under section 22 (2) can be made on the agent of the assessee.¹

Burden of Proof.—Where the I. T. O. disbelieves the statement of an assessee made in the verified return about the absence of any income from any particular source it is for the I. T. O. to show from that the assessee has any income from such source.²

Where the assessee did not admit that they were members of a joint Hindu family, but were never given an opportunity, of contesting and disproving the allegation that they were members of such family, and were taxed as such, it was held that the assessment was illegal.³

Similarly, where an assessee produced his account-books in compliance with a notice under section 22 (4) and the accounts were accepted, but the assessee was asked to explain certain entries, which he failed to do, it was held that the case did not fall within section 23 (4) and that the assessment should have been under section 23 (3).

The words "assess" and "assessee."—The words "assess" and "assessee" are used in the sense of finding out the income of an assessee which may be liable to be taxed.⁴

¹ A. I. R. 1931 Pat. 282.

² Bishun Pryia Choudhrani, A. I. R. 1924 Cal. 337 ; 1 I. T. C. 261. But see Bhikaji Vyankatesh David & Co. v. Commissioner of Income-tax, Nag., 1927 Nag. 283.

³ 1930 A. L. J. 1548 ; A. I. R. 1931 All. 23.

⁴ A. I. R. 1932 All. 83 ; 1931 A. L. J. 1109.

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.

Assessment.

P. 11, 59, 115.

(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.

P. 89, 90.

(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.

P. 11

(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.

P. 88, 89.

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.

23 (1).—Section 23 (1) enjoins the I. T. O. to make an assessment on the basis of the return when he is satisfied that the return is correct and complete. In such case no notice under section 23 (2) and 23 (3) can be issued. Nor can an assessee who has been assessed under section 23 (1) on the basis of his return prefer an appeal on the ground that notice under section 23 (2) and 23 (3) were not issued.¹

23 (2).—It has been shown in notes under section 22 that a return which deliberately fails to comply with the requirements of law is not a return at all and the I. T. O. is justified in ignoring it altogether and making an assessment under section 23 (4) to the best of his judgment. But there is a chance of the return being incorrect or incomplete even in a case where the assessee does not deliberately fail to comply with the requirements of the law as to the frame and filing of return. It is for such cases that section 23 (2) has been made.² Whether a return is correct or complete is a question of fact of which the I. T. O. is the sole judge.

Evidence in assessment proceedings other than returns and accounts of assessee.—In addition to his general power to call for accounts, the Income-tax Officer where he believes that a return made under section 22 (2) is incorrect or incomplete, has power to call upon an assessee to attend or to produce or cause to be produced evidence of the correctness of his return. If an assessee fails when required by an order under section 23 (2) to attend or to produce evidence in support of his

¹ *Asoka Mull v. Commissioner of Income-tax, Bombay*, 8 I. T. C. 340.

² *In re Abboy Ram Chunni Lal*, A. I. R. 1933 All. 197.

return, he is not liable to any penalty under section 51, but failure to comply with such orders has the result of placing the assessee in exactly the same position as a person who failed originally to make a return (see section 23 (4)), that is, he may not appeal against the order of assessment or take any action other than action under section 27 as described in paragraph 86. If the assessee is a registered firm, the Income-tax Officer may cancel its registration.

Under section 23 (3), the Income-tax Officer is empowered to utilise any evidence bearing on the assessment which he may obtain of his own motion, while under sections 37 and 38, he can enforce the attendance of any person for this purpose and compel the production of the information that he requires.

The following special instructions should be observed in calling for information from railway administrations :—

- (a) The information must be relevant to an individual assessment. Income-tax Officers should not, for instance, ask for a complete statement of all consignments to or from a particular station.
- (b) The demand for information must be couched in definite terms. For instance, it must state whether the particulars are required with regard to outgoing or incoming consignments and name the stations with regard to which the information should be collected.
- (c) The requisition for information should always be sent to the Agent of the Railway administration concerned. There is no objection, however, to Railway officers furnishing information direct to the income-tax authorities without the intervention of the Agent where the Agent has no objection to their doing so.

Section 37 gives power to call for Railway books.

Except as provided in section 19-A and Rules 42 and 43, a company should not be required to furnish the Income-tax Officer with a return of the persons (with their addresses) for the time being appearing on the share register of the company and the amounts of the dividends paid or payable to such persons during any particular period. Such a duty

would be burdensome to the company with no corresponding advantage to the administration. It is for this reason that in section 39 of the Act provision is made that the share register, the register of debenture holders and of mortgagees of any company are open to the inspection of income-tax authorities, who may also take copies or cause copies to be taken of any entries in such registers. Since the power to inspect, and take copies of such register is specifically conferred by section 39, no income-tax authorities utilising these special powers can be called upon to pay any fee for inspection or copies under the Companies Act.

Under section 20-A and Rules 42-A and 43-A any person responsible for paying any interest not being "interest on securities" is required to furnish on or before the 15th June every year to the Income-tax Officer in whose jurisdiction he resides, a return showing the names and addresses of all persons to whom during the previous year he has paid interest or aggregating interest exceeding Rs. 1,000 together with the amount paid to each such person.

The Bill as originally framed contained a provision empowering an Income-tax Officer to require information to be given regarding specific payments shown in the accounts of an assessee where there is reason to believe that such payments will become liable to tax in the hands of the recipients. This particular provision was omitted by the Select Committee on the Bill as being entirely unnecessary because Income-tax Officers have ample powers to disallow any payment shown in the accounts of an assessee where proof of the payment is not forthcoming.

Section 37 also provides for the issue of commissions. The scale of diet money and travelling expenses for witnesses summoned under this section should be that prescribed for attendance in civil courts in the province concerned.¹

Section 23 (3) does not justify the basing of an order on private enquiries, but in the absence of any better evidence in support of a return made by the assessee, the Income-tax Officer is entitled to fall back on the assessment of income

¹ Para. 89 of the Manual, pages 237-239.

made during the previous year even though that assessment was a best judgement assessment. ¹

Personal attendance of assessee.—While section 23 (2) empowers the Income-tax Officer to require a person making a return to attend at his office, under the provisions of section 61 any person required or entitled to attend before any income-tax authority may either attend in person or be represented by a person duly authorised by him in writing. The penalty to which an assessee who failed to attend when required to do so by an Income-tax Officer was liable under the Act of 1918, has been omitted from section 51 of the present Act. While there is no obligation on an assessee to attend in person at any stage of the assessment proceedings or before any income-tax authority in connection with any proceedings under the Act, and while he may be represented at any such proceedings by any person he pleases to authorise in writing failure to attend or to be so represented has the result that the assessee loses any right of appeal against the assessment.

It should, however, be particularly noted that the provisions of section 61 merely refer to attendance. Returns and verifications required under the Act must be signed either by the assessee himself or by some representative duly authorised for the purpose in proper legal form so that his acts will bind his principal.

It is desirable that tax-payers should be allowed to use whatever agency they please for the purpose of representing their case; and whatever person they authorise to represent them whether he be an employee, an accountant or any other person, has presumably been selected by them as the person having the best knowledge of their accounts and financial position, and such person is entitled to appear before any income-tax authority and to give explanations and produce evidence regarding any points of doubt that may arise.²

¹ Gopinath Naik v. Commissioner of Income-tax, U.P., 1936 I.T.L.J., page 21.

² Para. 90 of Manual, page 239.

Under section 23 (2) an assessee cannot be asked both to attend and produce his evidence.

Notices under section 22 (4) and 23 (2).—The notice under section 22 (4) is specific and requires the assessee to produce such accounts or documents as the I. T. O. may require. But there is nothing in law to make it obligatory on the part of I. T. O. to issue a notice under section 22 (4). It is purely optional. A notice under section 23 (2) is of a general nature and the law makes it obligatory on the part of I. T. O. to issue a notice under that sub-section if he has reason to believe that the return submitted to him under section 22 is incorrect or incomplete. The fact that he is the sole judge of the fact of the return being correct and complete, does not authorise him to dispense with the notice under section 23 (2) when he thinks the return to be incorrect and incomplete.¹ So when an assessee is not allowed under section 23 (2) to appear and meet the objection to his return the assessment is illegal.² But the powers under section 23 (2) are general and the I. T. O. is not under an obligation to directly specify the points on which evidence is to be adduced.³ No assessment under section 23 (4) can be made unless a notice under section 23 (2) is given.⁴

Scope of section 23 (2) and 23 (3).—The scope of section 23 (2) and (3) was examined in *In re Lachman Das Narain Das of Cawnpore*.

¹ *In re Ram Partap Singh Dial*, A. I. R. 1930 Lahore 277.

² A. I. R. 1926 Lahore 161.

³ A. I. R. 1925 Cal. 899.

⁴ A. I. R. 1931 Cal. 729.

Per Walsh, C. J. :—

“ For my own part I have no doubt, and I am confirmed by my examination of the other provisions of the Act, that the other evidence which the Income-tax Officer may require on specified points, under sub-section 3 of section 23, is evidence which he may require from the assessee and of which he may give him notice, specifying the points and requiring its production. It seems to me that this interpretation enables the machinery to work smoothly and naturally, and any other interpretation works difficulty. There is no doubt that the enquiry contemplated by section 23 is an enquiry such as that which the appellate court under section 31 may direct the Income-tax Officer to hold, or may himself make during the hearing of the appeal. It is deemed to be a judicial proceeding, and the Income-tax Officer has the same power as a court under the Civil Procedure Code when trying a suit to enforce the attendance of any person and to compel him to give evidence on oath, to compel the production of witnesses and of documents, and to examine witnesses on commission. So that he has all the powers of a Judge in a suit, so far as concern witnesses and documents. This gives him ample facilities for securing information and guidance from rivals in the trade of the assessee, or experts, or past employees, or managers, acquainted either with the particular business of the assessee, or the class of business in the neighbourhood,—and no further provision is required in any other part of the Act to vest that power in him. Section 37 is comprehensive and adequate. If sub-section 3 of section 23 gave power to the Income-tax Officer to summon further evidence himself, it would be tautologous. It would be merely repeating, in inconvincing and inadequate form, what is expressly provided by section 37. In my view, the matter is simple and clear. When the day is appointed, and the notice requiring the assessee to attend and produce evidence and so forth at the enquiry has been complied with, up to that point, there has been no default under sub-section 2. If the assessee makes default under sub-section 2 by failing to attend or failing to produce evidence, then undoubtedly the Income-tax Officer may, and indeed has no option but to, do his best under sub-section 4. But in this imperfect world especially with business it is difficult to understand for any one who has not been specially trained, occasions must often arise when the evidence produced before a tribunal falls short of giving the Income-tax Officer full and complete satisfaction. In this case, for

example, the assessee might have said 'the wastage is abnormal. I admit it. The fact is that our machinery is worn out. It has given great trouble this year, and partly on that account the wastage has been excessive and our profits much diminished.' The obvious course for the Income-tax Officer would be to say 'I was not aware of that, and if you satisfy me on that point, I shall be prepared to accept your claim of wastage, but before I do that, I require to produce further evidence about the machinery.' He may then adjourn the enquiry, fix a fresh date, and in order to prevent mistake, require by a fresh notice the assessee to produce other evidence on the specified point, namely, on the defect which had appeared in the machinery, on such adjourned date. As my brother pointed out during the argument, sub-section 2 does not confine the Income-tax Officer to one notice, and such further notice if given would become a notice under sub-section (2). The evidence, if produced, would be other evidence such as the Income-tax Officer has required on specified points, and having obtained it he can then assess under sub-section 3. If the assessee chooses not to produce the further evidence on those specified points, then the Income-tax Officer is thrown back on to sub-section 4, just as he is if the assessee has failed to produce any evidence in the first instance, and this view, which seems to me to work, as I have already said, quite easily and to do justice to all parties, derives confirmation from the fact that an order under sub-section 4 of section 23 is unappealable; in other words, an assessee who is so obstinate, or fraudulent, that he will not assist the Income-tax Officer by removing these difficulties and tendering further evidence on specified points, is not only penalised at possibly a figure higher than the true figure, but is also deprived of the right of appeal, which is given to those who try their best even though the tribunal does not accept their views....."

Dalal, J. :—

".....The applicant desires us to hold that the Income-tax Officer could hear evidence only of witnesses produced by him, while the Income-tax Commissioner expresses alarm in case this Court held that by the word 'require' in this clause is meant 'require from the assessee.' The Commissioner enquires how a fair assessment is to be made if the Income-tax Officer is confined to hear evidence produced by the assessee only and not any other evidence. This clause however is to be read with the rest of the Act, and it does not take away the power of the

Income-tax Officer to call for and hear evidence under the powers he has under section 37 of the Act. The only difference between clause 3 and clause 4 is that in cases falling under clause 3 he is to arrive at an assessment to the best of his judgment on the evidence before him, while under clause 4 he is to decide in the absence of evidence....."

As suggested in Walsh, C. J.'s judgment above, the words "such other evidence as the Income-tax Officer may require" in section 23 (3), simply refer to any evidence that the Income-tax Officer may call for under section 22 (4) or section 37. Section 23 (3) does not, of itself, confer on the Income-tax Officer any power to call for evidence, and that is why :—

- (a) No form has been prescribed for a notice calling for the production of evidence under section 23 (3).
- (b) No special penalty apart from that prescribed under the Civil Procedure Code has been prescribed for failure to comply with such a notice.

Waiver of notice under section 23 (3).—When the return submitted under section 22 was examined in the presence of the assessee's agent, who answered all the questions put to him by the I. T. O., and did not produce any further evidence, it was held that notice under section 23 (2) should be deemed to have been waived.¹

As soon afterwards etc.—Ordinarily it is the duty of the assessee who applies for an adjournment to find out the date fixed, but when the I. T. O. tells the assessee that an adjournment will be allowed and the adjourned date will be

¹ A. I. R. 1925 Cal. 899.

intimated to him it is not incumbent on him to find out the date and he is entitled to await the promised information.¹

At the time of making an assessment.—These words occur also in section 26 (2) and mean the time when assessment is to be made.² There is no prohibition in the Act limiting the time when an assessment is to be made. The language of the Act is no doubt naturally hinted to the normal case of taxation carried on through all its process, within the compass of the tax year, but apart from section 34 there is no provision which would justify the importation into the Act of an implied prohibition against the making of the assessment after the expiry of the tax year. At the end of the year in 1926-27, the partner of a registered firm M. & Co. purchased the business and assets of another registered firm B. & Co. Separate notices were sent under section 22 (2) to the two firms in April 1927. But when the I. T. authorities came to know of the purchase of B. & Co. in February 1928, they levied an assessment on the combined income returned by both the firms. On appeal by M. & Co., it was held that income of each of the firms should be separately assessed, but it was held that the assessment of income after the expiry of the tax year was valid.³ The word assessment is, however, not to be confined to the definite act of the order of assessment, but also includes the course of the process of assessment. The words "at the time of making the assessment" should be construed in the light of section 66 which refers to the course of any assessment. Where the I. T. Commissioner after weighing the factors

¹ A. I. R. 1930 Nag. 175 ; A. L. R. 1934 Nag. 194.

² A. L. R. 1933 Pat. 186.

³ A. I. R. 1934 P. C. 30 ; A. L. R. 1934 P. C. 79.

relevant in his opinion for determination of the question whether or not the business of the deceased was being carried on by the appellant who was the representative of the deceased, decided that it was being so carried on and was not discontinued, and the appellant urged that the commissioner had misdirected himself in regard to the onus by treating the appellant as having to discharge the onus of proving that he discontinued the business, it was held that the point of misdirection had failed and that the question of onus did not arise at all.¹

Points to be decided at the time of assessment.— Where the assessee produces his account-books for the year of account and complies with other requirements as to specific documents, assessment should be made under section 23 (3) on evidence which is before the I. T. O. and not on any figure not warranted by such evidence.² An assessment of income-tax should be made in a judicial manner. Assessment proceedings are quasi judicial proceedings, and no mere arbitrary proceedings are to be permitted. But a necessary presupposition of a judicial trial is that the assessee must produce all the evidence that the law requires him to produce, so that a judicial determination may be possible.³ So where there are proper materials on record assessment must be made under section 23 (3).⁴ Where the I. T. O. does not employ any method of computation in an assessment under section 23 (3), the assessment is illegal.⁵

¹ 1934 A. L. J. 873 P. C. ; A. I. R. 1934 P. C. 200.

² Biriraj Hukamchand, 35 C. W. N. 589.

³ Harmuk Roy Dulichand, 32 C. W. N. 713.

⁴ 1931 A. L. J. 345.

⁵ 1930 A. L. J. 1548; A. I. R. 1931 All. 23.

The decision of the I. T. O. whether or not there has been a compliance with the terms of a notice is a decision on a question of fact, so is question about the sufficiency of evidence.¹

The assessee should raise all pleas on which he means to rely in proceedings under section 23 (3), so the plea that certain shares have been divided among the members of a joint Hindu family should be raised at time of making the assessment, and if it is not so raised, it cannot be subsequently raised in appeal.²

Section 23 (4).—When the assessee fails to produce his account books, the Income-tax Officer gets jurisdiction to assess him under section 23 (4).³

Proceedings not arbitrary.—In making an assessment to the best of his judgment the I. T. O. does not possess arbitrary powers to assess at any figure he likes but he should be guided by the rules of justice, equity, and good conscience the assessment should be reasonable and should not proceed only on the private opinion of the Income-tax Officer. In any case, before *ex parte* assessment is made, the Income-tax Officer must conduct such local inquiry to ascertain the income of the assessee as the circumstances of the case may warrant. He must place on record such details of the result of his inquiry as would enable the Commissioner to see that the assessment was according to the rules of reason

¹ A. I. R. 1932 Oudh 164 ; A. L. R. 1932 Oudh 873.

² A. I. R. 1934 All. 217; 56 All. 504.

³ A. I. R. 1931 Cal. 209; A. I. R. 1930 Pat. 81; A. I. R. 1929 Pat. 409; A. I. R. 1929 Lahore 124; A. I. R. 1931 Rang. 97; A. I. R. 1933 All. 197; 1933 A. L. J. 47; A. I. R. 1930 Lahore 1014.

and justice and not arbitrary.¹ Where the Income-tax Officer fails to exercise the jurisdiction vested in him in a judicial manner the assessment is liable to be set aside by the Commissioner under section 33.²

It has been shown above that a combined notice under section 22 (4) and 23 (2) is perfectly legal, and therefore an assessment under section 23 (4) can be made for non-compliance with such notice.³

But when such a notice has been complied with, an assessment under this sub-section is not justified only because there is some technical error in such compliance.⁴ So also where the assessee attends in compliance with a notice under section 23 (2) and tenders evidence in support of his return, but the I. T. O. does not accept the evidence as conclusive, an assessment under section 23 (4) is not justified.⁵ Production of accounts means compliance with a notice under section 22 (4).⁶

Stages.—Section 23 (4) contemplates three cases : (1) of persons who fail to make a return, (2) of those who fail to comply with the terms of a notice under section 22 (4), and (3) of persons, who having made a return, fail to comply with all terms of a notice under this sub-section. The words

¹ A. I. R. 1934 Nag. 183 (2); A. I. R. 1933 Oudh 407; A. I. R. 1930 Rang. 5.

² A. I. R. 1930 Rang. 31; A. I. R. 1931 Lahore 87 F. B.; A. I. R. 1926 Lahore 233; A. I. R. 1931 Lahore 87 F. B.

³ A. I. R. 1930 Mad. 127.

⁴ A. I. R. 1930 Pat. 14.

⁵ A. I. R. 1925 Pat. 694.

⁶ A. I. R. 1926 Lahore 161.

“ having made a return ” describe the third class.¹ Section 23 (4) is not to be confined to non-compliance in any one case.² An assessee under section 23 (4) is even liable to reassessment under section 34 within one year on the ground that some income has escaped assessment.³

Irrelevant accounts.—The non-production of irrelevant accounts does not render the assessment one under section 23 (4). The underlying principle of requiring an assessee to produce his accounts is that he should place all the necessary data before the I. T. O. to enable the latter to make a correct estimate of the former's income. Therefore where the assessee gives all the data necessary for such estimate, but fails to produce some accounts books, which are shown to be irrelevant for the purposes of assessment, order under section 23 (4) cannot be passed because of the failure of the assessee to produce irrelevant documents.⁴ But where the assessee does not produce relevant accounts which are in his possession, he is liable to assessment under section 23 (4) inspite of other evidence which he might choose to put forward in support of his return.⁵ Whether or not the assessee is in possession of accounts is a question of fact, and where the statement of the assessee that he keeps no accounts is disbelieved by the I. T. O., the proper section to be applied is section 23 (4).⁶ The I. T. O. in British India is empowered under this section

¹ A. I. R. 1923 Pat. 5291 F. B.

² A. I. R. 1934 All. 930; 1934 A. L. J. 97; A. I. R. 1928 Cal. 587.

³ A. I. R. 1929 Lahore 178.

⁴ *In re Ganga Sagar of Khurja*, A. L. J. 1931, p. 345.

⁵ A. I. R. 1931 Cal. 723.

⁶ A. I. R. 1931 Rang. 53 F. B.

to ask an assessee in British India to produce accounts of his branch business outside British India.¹

Adjourned date.—An I. T. O. has jurisdiction to adjourn an inquiry under section 23 (3) to another date.² So where an inquiry is adjourned and the assessee fails to appear on the adjourned date an assessment under section 23 (4) is justified.³ But a letter or telegram intimating the granting of an adjournment of an inquiry is neither a notice under section 23 (2), nor a requisition under section 63, but is a mere information and does not by itself create any obligation.⁴

Cooked up accounts.—Accounts which are to be produced are genuine accounts and the production of cooked up accounts made for the purposes of income-tax is no compliance with a notice requiring the production of accounts.⁵

No appeal.—An assessment under section 23 (4) is not appealable.⁶ Nor can an assessee assessed under section 23 (4) be allowed to be heard in appeal on the ground that he is not liable to be assessed at all.⁷ But before an appeal is rejected, the Assistant Commissioner must satisfy himself that an order under section 23 (4) has been properly passed.⁸ It must be clear that the circumstances of the case bring the

¹ A. I. R. 1930 Mad. 764 F.B.

² A. I. R. 1930 Mad. 113 S. B.

³ A. I. R. 1930 Mad. 113.

⁴ A. I. R. 1930 Mad. 113 S. B.

⁵ A. I. R. 1929 Rang. 102.

⁶ A. I. R. 1930 Pat. 14.

⁷ A. I. R. 1929 Lahore 593 F. B. ; A. I. R. 1931 Pat. 306 F. B. ; A. I. R. 1932 Lahore 396.

⁸ A. I. R. 1922 Lahore 5.

case under section 23 (+), and an appeal is not barred simply because the I. T. O. chooses to describe his order as one under section 23 (4).¹ The rejection of an appeal *exparte* in his chamber by an Assistant Commissioner is not justified.² But where the Assistant Commissioner finds that the facts set forth by the I. T. O. as entitling him to make an assessment under section 23 (4) are proved, he shall not go into the merits of the appeal.³ But where the terms of notices issued by I. T. O. have been complied with, the order should be treated as one under section 23 (3) and an appeal should be heard on merits.⁴

Question of law, where does not arise—The question whether the assessment made by the I. T. O. under section 23 (4) is valid or not is not a question of law that can be referred to the High Court.⁵ It has been held that the order passed by an Assistant Commissioner in an appeal against an order under section 23 (4) rejecting the appeal on the ground that section 23 (4) had been rightly applied and that no appeal lies, is not an order under section 31 and that no reference lies to the High Court from such order of the Assistant Commissioner.⁶ But a full Bench of Patna High Court has held that the Assistant Commissioner's order rejecting an appeal against an assessment under section 23 (4) on the ground that it was barred by the proviso

¹ A. I. R. 1929 Lahore 593 F. B.

² A. I. R. 1932 All. 64.

³ A. I. R. 1932 Pat. 1 F. B.

⁴ A. I. R. 1927 Mad. 49 F. B.

⁵ A. I. R. 1934 Lahore 983 ; A. L. J. 1934 page 272; A. I. R. 1934 All. 559 ; A. I. R. 1931 Rang. 97.

⁶ A. I. R. 1932 All. 64 ; A. L. J. 1932, page 576.

to section 30(1) is an order under section 31, and the assessee is entitled to ask the Commissioner to state a case raising the question of law whether or not the facts established before the Assistant Commissioner are such as to bring the assessee within the purview of the proviso to section 30 (1).¹ The point was left undecided by the Oudh Chief Court in a case where it was only held that where an assessment made by the I. T. O. is to the best of his judgment under section 23 (4) and is neither arbitrary nor unreasonable or unjust, the High Court would not call upon the Commissioner to state a case for reference.² But whether a return submitted amounts in law to a return as required by the Act and rules is a question of law.³ Thus where an assessee signed the prescribed form but left all the columns blank and wrote the word "blank" against the item "total" and made a return, it was held that the return was no return in law.⁴

Assessment under section 23(4) should be equitable.— In making an assessment under section 23 (+), the I. T. O. should be guided by the principles of justice, equity, and good conscience.⁵ But the fact that the assessment under section 23 (+) is arbitrary does not involve a question of law.⁶ Nor can an assessment under section 23 (+) be deemed to be arbitrary simply because it is higher than the assessment of the previous year made on the basis of assessee's return.⁷

¹ A. I. R. 1932 Pat. 1 F. B.

² A. I. R. 1933 Oudh 396.

³ A. I. R. 1928 Lahore 944.

⁴ A. I. R. 1928 Lahore 329.

⁵ A. I. R. 1931 Lahore 87 F. B.; A. I. R. 1930 Rang. 31; A. I. R. 1933 Oudh 407.

⁶ A. I. R. 1931 Rang. 191.

⁷ A. I. R. 1932 Pat. 166.

Expenses.—Once an assessment under section 23 (4) is made all the expenses incidental to the business shall be presumed to have been considered in arriving at the net income.¹

Flat rate.—The adoption of a flat rate by the I. T. O. in the absence of a reliable data of income from a particular source, involves a question of law.²

Death of Assessee.—Where an assessee dies after having failed to make a return under section 22 (2), a fresh notice should be issued to his successor, and the latter should not be assessed under section 23 (4) for failure of the former.³

Res judicata.—The principle of res judicata has no application to income-tax proceedings and an Income-tax Officer is competent to reopen the proceedings taken before his successor when fresh evidence is discovered or fresh facts come to light warranting the contrary view. "Except for certain purposes the I. T. O. is not a court."⁴ Thus it has been held that the order of an I. T. O. allowing salaries of a certain partner in a particular year is not binding on his successor.⁵

But it has been held that the Income-tax Officer is a tribunal for the purposes of section 135 (2) of C. P. C., so

¹ A. I. R. 1932 Lahore 873 ; A.I.R. 1932 Lahore 873.

² A. I. R. 1929 Nag. 243.

³ 33 Bombay L. R. 388.

⁴ *In re* Deokinandan and Sons, A. I. R. 1930 Lahore 605; A. I. R. 1930 Mad. 209 F. B.

⁵ *In re* Dental Stores, A. I. R. 1931 Lahore 341.

that a person on his way to the Income-tax Officer in response to a notice under section 23 (2) is exempt from arrest.¹

23-A. (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

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Power to assess individual members of certain firms, associations and companies.

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

¹ A. I. R. 1933 Lahore 203 ; A. I. R. 1933 Lahore 214.

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 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.

Section 23-A was inserted by the Income-tax (Amendment) Act XXI of 1930. The select committee in stating the objects and reasons observed :—

OBJECTS AND REASONS.

As regards sub-section (1), we agree, in the first place, with those criticisms which point out that there may be perfectly genuine firms of which one member only is competent to bind the firms by his act, while on the other hand, we consider that the sub-section as drafted could

easily be evaded by an unwritten agreement or understanding under which a deed of partnership giving such powers to all the partners could be rendered a practical nullity and the actual power placed in the hands of one partner only..... The real purpose of the sub-section should be clearly stated and its provisions confined to cases where a firm or association has been formed and is used really and principally in order that one or more of its partners may evade the incidence of the Income-tax. Finally we have added an explanation to make it clear that firms such as are common in India in which one man puts up the whole or the major portion of the capital and is the principal partner in possibly a dozen or more firms with working partners associated with him, are not necessarily to be deemed to have been formed for the purpose of evasion.

As regards sub-section (2) of the proposed new section 23 (a), we are convinced that the criteria contained in clauses (a), (b) and (c) of the sub-section as originally proposed would fail to achieve the desired object. These clauses would in fact have limited the operation of the sub-section to private companies only, because, as many of the objectors have failed to observe, the conditions were to be alternative and not cumulative. On the other hand, it would have been perfectly easy for any person to form a public company having none of these attributes and yet actually under the control of a single person. As in the case of sub-section (1), we are also impressed with the importance of having the real purpose of the enactment clearly stated in the body of the sub-section..... The most important feature of the sub-section as now drafted is perhaps the proviso that it is not to apply to a company which is a subsidiary company in which the public is substantially interested.

Sub-section (3) provides that any firm, association or company must be given an opportunity of being heard before orders are passed under the section. Sub-section (4) provided in the case of a firm or association that the additional tax payable by a member, may, in default of payment by him, be recovered by the firm or association, and in the case where the individual members of a company have become liable to additional tax in respect of undistributed profits, that the proportionate part of the tax payable on such undistributed profits shall be recoverable only from the company. Sub-section (5) provides that where undistributed profits have been included in the total income of individual members of a company

they shall not, if subsequently distributed, be taxable again in the hands of the individual.¹

See also notes under section 33-A.

Before an I. T. O. can assess the shareholders of a company under section 23-A (2) of the I. T. Act on accumulated or undistributed profits of the company he has to be satisfied on two heads: Firstly, that the profits of the company have been allowed to accumulate beyond the existing and contingent needs of the company, having regard to the maintenance and development of the company, or that a reasonable part of the profits, having regard to the said needs, have not been distributed to its members. Secondly, he must be satisfied 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 so accumulated or not distributed. Unless both these conditions are satisfied, and in each case it is a question of fact, the members of the company do not become liable to assessment on their shares in the accumulated or undistributed profits.²

Assessment of Bogus Companies and Firms.—The object underlying the introduction of this section is to prevent the avoidance of income-tax and super-tax by companies, firms or other association of individuals by the adoption of certain devices. Where the Income-tax Officer is satisfied that a company, firm or other association of individuals is adopting any of the devices mentioned in sub-sections (1) and (2) of section 23-A he should obtain the approval of the Assistant Commissioner to assess the individual members on their share of the profits and gains and if it is accorded proceed to assess accordingly. The Assistant Commissioner should give the firm, company or association of individuals as the

¹ Report of the Select Committee.

² A. Harvey v. Commissioner of Income-tax, Madras, 1935 I.T.L.J. page 311.

case may be, a hearing before he directs the Income-tax Officer to refrain from determining the sum payable as income-tax by it and make the assessment on the members.

Section 23-A is not one of the sections mentioned in section 58. Consequently "Income-tax" in section 23-A (1) and (2) means "Income-tax and super-tax." It follows that the Income-tax Officer under these sub-sections must refrain from determining the amount of their income tax or super-tax payable by the firm, association or company.¹

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 set-off against his income, profits or gains under any other head in that year.

Set-off of loss in computing aggregate income.

P. 49, 91.

(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.²

Set-off of loss under one head of income against income under another head.—Under the Act of 1918 it was the aggregate amount chargeable under each of the separate heads mentioned in sections 7 to 12 of the Act that determined the total and taxable income of an assessee, so that when a person carried on a trade or profession and also had an

¹ I. T. Manual, para 91, pages 239-240.

² See also notes under section 9 (1) supra.

income from house property, if he had actually incurred a loss from the trade or profession, the figure adopted under that head in arriving at the aggregate amount of the income chargeable to tax was nil and not a minus sum. Under the provisions of section 24 of the Act a loss under one head of income may now be charged against profits under another in the same year. Where a minor has been admitted to the benefits of a partnership a claim can be put forward on his behalf for set-off under sub-section (2) of section 24 in respect of his share of any loss sustained by the firm. See paragraph 10.

Sub-section (2) of section 24 only applies specifically to the case of a registered firm but the Madras High Court has held that under the provisions of section 24 (1) a partner in an unregistered firm is entitled to set-off his share of the net loss incurred by the firm in the same circumstances and to exactly the same extent as a partner in a registered firm. It has been decided to accept that decision. The result is as follows. A firm owning property or having income from a business and being in receipt of interest on securities would, under the provisions of sub-section (1), be entitled to set-off a loss from the business against its income chargeable in respect of interest on securities under section 8 or property under section 9. But it might happen that a firm might incur a net loss, in which case it would not be liable to tax. Sub-section (2) specifically provides for such a case.

Illustration.—A firm has property the annual value of which is Rs. 2,000, has income from interest on securities amounting to Rs. 1,000 and carries on a business from which it incurs in one year a loss of Rs. 10,000. The firm is entitled under the provisions of sub-section (1) section 24 to set-off the loss from business against the annual value of the property and the interest on securities, and its total income would be minus Rs. 7,000. A who is a partner in the firm having a share of one-half in the profits thereof, has other personal income of Rs. 6,000 from interest on securities. He is entitled under the provisions of sub-section (2) to set off his share of the net loss from the firm (viz., Rs. 3,500) against this personal income and would be assessed on a total income of Rs. 2,500.

Where an individual is a partner in two separate firms of which one is registered and the other unregistered and has no separate personal income, he should be allowed, in dealing with any application for refund

under section 48, to set-off his share of any net loss incurred by the unregistered firm against his share of the profits of the registered firm. For example, 'A' having a half share in an unregistered firm, which incurred a net loss of Rs. 2,000 in one year, had in the same year no personal income liable to assessment to income-tax in his own hands, but had a similar share in another registered firm which had made a net profit of Rs. 10,000. Such cases will be rare and should be dealt with on the basis of real income, i.e., in the case above quoted 'A' should get a refund so adjusted that he shall suffer finally tax of 5 pies in the rupee on his real income of Rs. 5,000 minus Rs. 1,000 i.e., Rs. 4,000. The same principle would apply if both firms were registered. Where the situation is reversed that is where the registered firm makes a loss and the unregistered firm a profit obviously no relief can be given. Nor can an unregistered firm claim to set-off losses of the individual partners against the income of the firm. But a partner in a registered firm should be allowed to set-off loss incurred in his individual capacity against his income as partner in dealing with any application under section 48.

Similarly if 'A' has a loss of Rs. 1,000 in business, an income of Rs. 1,000 from interest on securities and an income of Rs. 3,000 from dividends, he should be allowed to set-off his loss of Rs. 1,000 against his income of Rs. 4,000 and should be taxed on the balance of Rs. 3,000.

In the same way, if 'A' borrows money to buy securities or shares and the interest on the loan exceeds the interest or dividend that he receives, he is entitled to set-off the excess of the interest paid over the interest or dividend received against any other taxable income. (See paragraph 39).

The correct procedure in such cases is to ascertain the total income after allowing the set-off, calculate the tax on that at the appropriate rate (apply section 17 if the circumstances justify such a course), credit the tax "suffered" on the dividends on the one hand and debit any refunds granted under section 48 on the other and collect or refund the balance as the case may be.

From the point of view of equity it is obviously reasonable to allow a set-off in these cases; from the legal point of view it is incorrect to

argue that section 24 (1) is inapplicable to such cases on the ground that income from dividends or income derived from a firm is not (from the point of view of the shareholder or partner) income falling under any of the heads mentioned in section 6—Section 24 (1). Obviously such income must fall under one of these heads, otherwise (a) it could not be included in the total income of the shareholder or partner: but it is so included—section 16; and (b) the shareholder or partner could in no circumstances be assessed individually on such income, but under section 14 (2) he is assessable on such income if it so happens that the company or firm has not been assessed. Consequently such income from dividends or from a firm must fall under one of the heads in section 6. Income from dividends should evidently be regarded in the hands of the shareholder as income from "Other sources", while income from a firm should be regarded in the hands of the partner as income from "Business". On the other hand the partner or shareholder is not an "assessee" in respect of such income unless the firm or company has not been assessed.¹

History.—The words "or any person.....firm" and "or to his.....be" in sub-section (2) were inserted by the Indian Income-tax (Second Amendment) Act XVIII of 1933. The Act of 1918 contained no provisions like those contained in section 24, but it was held that allowance should be made for losses in calculating the taxable income of an assessee, on lines on which the present section 24 has been based.²

Scope.—Sub-section (2) applies only to registered firms. Members of unregistered firms cannot get the benefit of its provisions. But it has been held that section 24 must be construed in the widest and most liberal manner.³

¹ I. T. Manual, para. 94, pages 241-243.

² See *In re Munisami Chetty*, A. I. R. 1924 Mad. 205; 1 I. T. C. 227; *In re Balkishan Nathai*, A. I. R. 1924 Nag. 153; 1 I. T. C. 248; and *In re Arjun Khemji*, 1 I. T. C. 249.

³ *In re Ilhansaheb Muhammad Nagui*, 33 P. L. R. 418, para. 44 above.

And a partner in an unregistered firm which has made a loss in the year of account is entitled to set off his share of the loss against the profits and gains made by him in his individual trade and otherwise. Whether a firm is registered or unregistered, partnership does not obstruct or defeat the right of a partner to an adjustment on account of his share of loss in the firm, whether the set off be against other profits under the same head of income within the meaning of section 6 of the Act or under a different head (in which case only need recourse be had to section 24 (1)).¹

Burden of Proof of Loss.—The burden of proof of loss is on the assessee who claims a deduction on the ground of such loss.² “When once income has been admitted the burden of proving loss is on the assessee, who alleges them and the losses cannot be said to be satisfactorily proved unless all the particulars with regard to them are clearly shown.”³

Loss, what is.—Loss in this section means trading loss and not capital loss. In distributing the property of a dissolved partnership it is not open to the assessee to say that some part of it represented trading profits and some part of it trading losses. It is in fact capital, where it results in a loss no deduction in respect of that loss can be claimed by the assessee.⁴ Similarly where on a reconstruction of a firm by the addition of a new partner a revolution of

¹ RM. AR. AR RM. Arunachalam Chettiar v. Commissioner of Income-tax, Madras, 1936 I. T. L. J. page 84 at 85 P. C.

² A. L. R. 1932 Cal. 149 F. B.

³ *In re* Radha Krishna Ramnarayana, A. I. R. 1929 Nag. 153.

⁴ K. Sidaha Gounder & Sons v. Commissioner of Income-tax, Madras, 7 I. T. L. J. page 203 F. B. ; A. I. R. 1932 Mad. 375 F. B.

the assets of the business was made, and with respect to the immovable property acquired in the course of business, the depreciation in value was estimated at a certain sum and a deduction thereof was claimed as a trading loss, it was held that the sum was not a trading loss in the year of assessment but only an estimated depreciation of the value of assets.¹ Loss means loss incurred in transactions entered into for the purpose of earning profits. Where land was purchased for the purpose of investment, but subsequently sold at loss, it was held that the loss could not be deducted from the assessable income.² Thus where an assessee purchases shares for a price in excess of the face value, the excess is no loss.³ Nor is a commission paid to a banker for realising interest on Government security a loss of profit.⁴ But where an ex-partner failed to pay back a loan it was held that the loss could be set off.⁵

An ex-partner's share of the loss in a certain trade which the assessee had to bear by reason of the ex-partner being unable to meet his share of loss in partnership business cannot be set off against the assessee's other income, profits or gains as a loss of profits and gains within the meaning of this section.⁶

Depreciation allowance and set-off.—Where an assessee owns several businesses and the profits and gains of

¹ A. I. R. 1934 Rang. 1 S. B.

² A. I. R. 1933 Sind 145.

³ *In re Gangasager*, A. I. R. 1929 All. 969.

⁴ *In re Forbes*, A. I. R. 1929 Pat. 1419; 7 I. T. L. J. 318.

⁵ *Khemchand Ramdas v. Commissioner of Income-tax, Bombay*, 7 I. T. L. J. 400.

⁶ *RM. AR. AR. RM. Arunachalam Chettiar v. The Commissioner of Income-tax, Madras*, 1936 I. T. L. J. page 84.

one business are insufficient to cover the full depreciation allowance admissible under section 10 (2) such depreciation allowance can be set off against the profits and gains of the other business of the assessee.¹

Loss in section 24 (2) refers to loss of "profits or gain." Phrase 'loss of profits or gain' when the loss is under the head of business means loss in the year's working. An assessee can claim, in the case of business which has resulted in a loss, that the amount of that loss shall be increased by adding the amount of diminution of value of building, machinery etc.²

Set-off of share of loss in partnership business against profit in separate business.—Section 24 (1) deals with allowance of set-off between different heads of business mentioned in section 6, and not allowance of set-off between different business coming under one head. Section 24 (2) deals with the allowance to the partners of registered firm. But it has been held that a partner of an unregistered firm who suffers a loss in the partnership business is entitled to set off the loss sustained by him in partnership business against profits made by him in his individual business. This view is passed on an interpretation of section 10 (1), under which tax is payable by an assessee in respect of any business carried on by him. The words "any business" have been construed to mean "each and every business" carried on by him. For calculating the total income of the assessee, therefore no

¹ Commissioner of Income-tax, Madras v. Messrs. A. C. Chettiar & Co., 53 Mad. 202 ; 123 I. C. 801 ; Karam Ilahi Muhammad Shafi v. Chief Commissioner of Income-tax, 3 I. T. C. 446.

² Commissioner of Income-tax v. Ballarpur Collieries, Chanda, A. I. R. 1930 Nagpur 183.

distinction can logically be made between profits earned by an assessee alone and profits which he earns in partnership. It would be unfair to tax an assessee for income in one capacity, which in fact on account of loss incurred in another capacity, he may have earned no income at all, and his "total income" may be therefore nil or even a minus sum, viz., he may have suffered a loss.¹

Bad Debts.—(See also notes under section 13 supra.)

What is a bad debt is nowhere defined in the Act. Nor is a deduction in respect of a bad debt provided anywhere. But deduction is allowed in respect of bad debts because the assessable income cannot be correctly estimated unless such allowance is made.

What are bad debts is at times difficult to determine. It has been held by the Chief Court of Nagpur that the right of an assessee to write off bad debts is absolute both as regards the amount and as regards the year.² But the more correct view is that the assessee is not the sole judge as to when he should declare a particular debt as bad. The question whether a particular debt is bad and when it becomes bad is a question of fact to be determined by the Income-tax authorities upon a fair consideration of all relevant and admissible evidence.³ Thus it has been held in the P. C. Case cited above that an assessee is not entitled to declare a debt bad, which had become bad before the beginning of the year of assessment.

¹ Commissioner of Income-tax, Madras v. M. A., R. A. R. Chettiar, 47 Mad. 660; 1 I. T. C. 278.

² Commissioner of Income-tax v. S. M. Chitnavis, A. I. R. 1929 Nag. 50; Also see Ganga Sagaur v. Emperor, A. I. R. 1929 All. 919.

³ *In re* Sir S. M. Chitnavis, 59 I. A. 290 P. C.; 127 I. C. 772.

It was held by Bombay High Court that money due by a joint stock company are not bad debt or a business loss to the creditor unless the company has ceased to be a going concern.¹ But in another case it has been held that there is no justification for the suggestion that a debt due from a limited company which is still a going concern is incapable of being treated as a bad debt. Whether a debt is wholly bad or irrecoverable is in every case (whether the debtor is human being or joint stock company or any other entity) in question of fact in each case to be decided by the appropriate tribunal upon a consideration of all relevant facts.² Instalments of debt as they fall due may become bad, and where the instalments of debt due within a year are declared bad, the assessee can claim a set-off in respect of such instalments as against profits or gains for that year.

Time Barred Debts.—A time barred debt is not necessarily a bad debt. Similarly a debt within limitation is not necessarily a good debt. In every case it is a question of fact to be decided after a consideration of all the relevant circumstances.³

24-A. (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

Assessment in case of departure from British India.

P. 92.

¹ A. I. R. 1933 Bom. 20.

² A. I. R. 1934 P. C. 180.

³ A. I. R. 1932, 178 P. C.; A. L. J. 1932, 647.

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.

Assessment of temporary residents.—Before the passing of the Indian Income-tax (Second Amendment) Act, 1933, there was no

provision in the Act for the issue of a notice under section 22 (2) before the close of the financial year for the purposes of assessing the income of that year. The absence of such a provision enabled touring theatrical companies and other temporary residents as also persons about to change their more permanent residence to escape income-tax by leaving the country before the close of the year. The new section 24-A is designed to bring such assesseees under assessment. Where it appears to an Income-tax Officer that a person may leave India during the current year or shortly after its expiry and may not return to India he may serve a notice upon him requiring him to furnish a return in the same form and verified in the same manner as a return under section 22 (2), of his total income for each of the completed previous years from the period from the expiry of the last previous year for which he has been assessed and of his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure. The minimum period within which such a return should be required to be made is seven days. The Income-tax Officer may in the exercise of his discretion allow any period exceeding this limit according to the circumstances of each case. Such a notice is a notice under section 22 (2) and all the provisions relating to assessment apply thereafter. The assessment shall be made for each completed previous year included in the period of assessment at the rate at which such total income would have been charged had it been fully assessed. As regards the period from the expiry of the last of such previous years to the probable date of departure the Income-tax Officer should estimate the total income and assess it at the rate in force for the year during which the assessment is made.

It should be particularly noted that this section should not be used to assess an income which has escaped assessment or has been assessed at too low a rate in respect of which the Income-tax Officer cannot issue a notice under section 34.¹

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

Tax of deceased person payable by representative.

P. 93.

¹ I. T. Manual, para 92, page 240.

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 assessed 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.

Section 24B was inserted by the Indian Income-tax Amendment Act XVIII of 1933. It has no retrospective effect, and does not apply to cases in which death took place before the midnight on September 10, 1933, or the amending Act came into force on 11th September 1933.¹

¹ Darabsba Nasarwanji Mehta v. Commissioner of Income-tax, Bombay, 9 I. T. L. J. page 62.

Assessment of deceased persons.—This section provides that an executor, administrator or other legal representative of a deceased person shall be treated as an assessee for the purposes of an assessment on the income of a deceased person. There was no provision in the Act for the assessment of the incomes of deceased persons before the passing of the Indian Income-tax (Second Amendment) Act, 1933, with the result that such incomes escaped tax. The Act as now amended has stopped that loophole. The liability of an executor, administrator or other legal representative in respect of tax due by the deceased is, however, confined to the payment of tax to the extent to which the estate of the deceased is capable of meeting the charge. The charge of Income-tax on the income of a deceased person does not rank in any way prior to other charges to which the estate may be liable.

The procedure to be followed in making such assessments is as follows. Where no notice has been served on a deceased person under section 22 (2) or 34 as the case may be, a notice may be served on the executor, administrator or other legal representative and an assessment made as if such person were the assessee. Where notice has been served on deceased person, but no return has been made or where the return made is in the Income-tax Officer's opinion incorrect or incomplete, the Income-tax Officer may assess the income and determine the tax payable. For the purposes of making such assessments, the Income-tax Officer may require the executor, administrator or legal representative of the deceased to produce documents or other evidence under sections 22 and 23. All the provisions of the Act relating to the assessment and collection of a tax apply to these cases. See also paragraph 118.

Where an assessment is made in pursuance of sub-sections (2) and (3) of section 24-B, the assessment should be regarded as one made under section 23, since the legal representative of the deceased is for the purposes of the Act the assessee. All the consequences of an assessment under section 23 will therefore follow : e.g., a notice of demand can be issued to the legal representative under section 29, and an appeal can be filed by him under section 30 or other relief sought by him in the circumstances and to the extent that similar relief could have been sought by the assessee had he been alive.¹

¹ I. T. Manual, para. 93, pages 240-241.

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 the 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.

Assessment in case of discontinued business.

P 14, 96.

(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.

P. 96.

(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

P. 14, 96.

VI of 1918.

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) or 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.

History.—The words “on which.....1918 ” were substituted by the Income-tax Amendment Act XI of 1924. The amendment of 1924 simply removed a defect in drafting. Under the Income-tax Act of 1922, provision was made for (1) the taxation of a discontinued business which was commenced after March 31, 1922 and (2) the taxation of a discontinued business which was in existence on 31st March 1922, thus leaving a blank so far as the taxability on the discontinuance of a business, which was in existence on 31st March 1922 but was not taxed under the Act of 1918.

Business closing down.—The only exception to the general rule that assessments are made on the profits of the previous year is contained in section 25 (1) where, in order to guard against a possible loss of revenue owing to delay in making assessments on the profits of businesses, professions or vocations that close down during the course of a financial or commercial year, it is provided that in such cases in addition to the assessment on the income of the preceding year a further assessment

may be made in the year in which a business, profession or vocation is closed down, on the income of that year. Sub-section (2) of that section imposes a statutory obligation on persons discontinuing a business, profession or vocation to give notice of such discontinuance within 15 days of the discontinuance.

It is to be noted that these provisions apply only to businesses, professions or vocations, that is to say, to profits or gains taxable under sections 10 and 11 and further, that they only apply to 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. They do not apply to any business, profession or vocation on which income-tax had been charged under the provisions of that Act, as these are subject to the special provisions of section 25 (3) which are described below.

The power to make this additional assessment under section 25 (1) is a discretionary power which may be exercised whether the business, etc., is a purely temporary business commencing and closing down in the same year, or whether it is a business that has been in existence and has been previously taxed under the present Act. It should only be used in cases where there is reason to anticipate that the tax may not be collected unless the assessment is made in the year in which the business, etc., closes down. Where there is reason to believe that there will be no difficulty in making the assessment and collecting the tax in the usual manner, that is, in the year after the business closes down and on the profits of the year in which it did close down, there is no need to use the special powers conferred by this sub-section.

The profits to be taxed under the provision of section 25 (1) are the profits accruing between the end of the last "previous year" of which the profits have been taxed and the date of discontinuance of the business. Further, the rate to be applied in taxing the discontinued business under sub-section (1) is the rate in force in the year in which the assessment is made.

Where a business, profession or vocation had tax charged on it under the provisions of the Income-tax Act of 1918, the provisions of sub-section (1) to section 25 cannot be brought into use for the assessment of any such business. On the contrary for reasons given in paragraph 14, it is, under the provisions of sub-section (3) of section 25, not liable to tax

in respect of profits or gains for the period between the end of the last "previous year" and the date of discontinuance, but is entitled to substitute the profits of that period for the profits of the last "previous year." For example, in the case of a business whose "previous year" ends on 31st March, if it closed down on March 31st, 1923, its assessment for 1922-23 will be on the profits for the year ending 31st March, 1922, or at its option, on the profits of its year ending 31st March, 1923. If such a concern closed down on 30th April, 1922, it would still be assessed in the year in which it closed down, but the assessment would be on the year's profits to 31st March, 1922, or at its option on the profits of the month of April 1922. If, however, the concern's "business year" ends on 30th April and it closes down on 30th September, 1922, its assessment in the year 1923-24 would be on the profits of its year to 30th April, 1922, or at its option on its profits from 1st May 1922 to 30th September 1922. This special provision applies only to a business, profession or vocation on which tax was charged under the Act of 1918, and when a claim for this concession is made, it must be supported by proof that tax had been charged under the Act of 1918 in respect of that very business, profession or vocation.

An assessee should be allowed the benefit of section 25 (3) if (1) he has (for example) both a business and a profession and discontinues only one of them or (2) has more businesses than one and discontinues one or more, but not all of them, provided that they are genuine distinct businesses for which separate accounts are maintained; and not mere branches of a single business. The section should, of course, only be applied to the income of any profession or business that is actually discontinued.

A claim to be assessed under this sub-section may be admitted if it is made not later than the end of the year following that in which the business, profession or vocation is discontinued.

N. B.—The provisions of section 25 apply to the complete stoppage or discontinuance of a business, profession or vocation and do not apply to any change in the proprietorship. Where there is any change in the proprietorship merely, the provisions of section 26 apply (see paragraph 98).

Where a business, profession or vocation is completely discontinued and is not merely transferred from one proprietor or set of proprietors to

another, the person who carried on the discontinued business is responsible for the payment of the tax, and where the proprietorship was vested in a firm, section 44 specifically provides that the persons who were members of the firm on the date of such discontinuance, are jointly and severally liable to any tax due from the firm.¹

Discontinuance, what is.—Discontinuance means complete clocation and not mere partial stoppage.²

Section 25 applies to complete clocation of a business, profession or vocation, and not a mere change in proprietorship. Thus where a company went into voluntary liquidation and the official liquidator transferred the business of the company to a new concern which carried on the business, it was held that there was no discontinuance of business within the meaning of section 25.³ Similarly where a son relinquished his right, title and interest in favour of his father with power to realise the arrears, it was held that there this was merely a case of change of ownership, and not of discontinuance of business.⁴ Thus where a company sells its business, and the vendee carries it on, there is no discontinuance.⁵

Ephemeral Associations.—This section is frequently applied, in practice, to assess touring companies, Liquor shop syndicates, Toll gate syndicates, etc., which generally consist of comparatively short-lived business and which are not actually transferred from predecessor to successor. This

¹ Para 96 of I. T. Manual, pages 243-245.

² Highland Railway Co. v. Special Commissioner, 2 T. C. 151.

³ *In re* M. H. Shaiyana & Co. Ltd., 50 Bom. 87.

⁴ Kalumal Shorimal v. Commissioner of Income-tax, Punjab, 3 I. T. C. 341.

⁵ A. I. R. 1926 Bom. 129.

section coupled with section 34 gives the Income-tax Officer the necessary powers to assess such incomes. If there is any continuity in any of these businesses, the assessment will be governed by section 26 and not by section 25.

Different businesses—Identity, question of fact.—Where two or more businesses are carried on by one assessee, it is always a question of fact whether the two or more distinct trades are really two departments of the same business, or two businesses.¹

A company owned and traded with one steamship ; it afterwards acquired fifty-nine sixty-fourths of a second steamship, taking over the management and keeping the accounts thereof, and claimed to be assessed as a single concern taking the two ships together. It was held, that the second steamship was a concern carried on by two or more persons jointly, and that its profits must be assessed separately. In such a case the old business is neither discontinued nor merged in the new, the two continuing to exist side by side.²

Burden of proofs.—An assessee has to show that his case comes within section 25 (3) in order to get the benefit of it.³ The sub-section is only intended to prevent double taxation and does not apply to a case where the income-tax is assessed on salaries in the year in which they are earned.⁴

¹ Howden Barter & Armaments Co. Ltd. v. Steward, 9 T. C. 205 ; Scales v. George Thompson & Co. Ltd., 13 T. C. 83.

² Attorney-General v. Borrodailee, (1814) 1 Price 148 followed. JJ. Farrel v. The Sunderland Steamship Company, Ltd., 4 Tax Cases 60.

³ A. I. R. 1932 Lahore 344.

⁴ B. J. Flecher v. Commissioner of Income-tax, Madras, 9 I. T. L. J. 391, 1935.

25-A. (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:

Assessment after
partition of a Hindu
undivided family.

P. 70.

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.

History.—This section was inserted by the Income-tax Act III of 1928. The word “hitherto” and sub-clause (3) were inserted by Act XXII of 1930.

See also notes under section 14 regarding assessment of a joint Hindu family.

Scope.—Section 25-A contemplates cases in which there is disruption of a family so that a joint family as such ceases to exist, and no property previously belonging to it retains the character of joint family property. It is immaterial whether the property is divided by metes and bounds or is held in defined shares.¹

It is necessary that there should be an actual division of the joint family property, mere disruption of the status of a joint family is not enough. According to Hindu Law a joint Hindu family becomes divided by the declaration of an unequivocal intention of one or more of its members to become separate. But section 25-A contemplates something more than a mere declaration, otherwise the words “and that the joint family has been partitioned” would become meaningless.² But it is submitted that it is not necessary that there should be a partition by metes

¹ *Biradhmal Lodha v. Income-tax Commissioner*, A. I. R. 1934 All. 217; *Nathumal v. Commissioner of Income-tax*, Lahore, 2 I. T. C. 429; A. I. R. 1927 Lahore 616.

² *Saligram Ram Lal v. Income-tax Commissioner*, Punjab, 8 I. T. L. J., page 216, 1934; A. I. R. 1934 Lahore 941.

and bounds. Separation of property in definite shares would be enough to satisfy the requirements of this section.¹ The question arose before a Bench of Lahore High Court in *Sher Singh Nathuram v. Commissioner of Income-tax, Punjab*,² when it was held that the question whether section 25-A requires actual partition of joint family property by metes and bounds as a condition precedent to the recognition of a partition under section 25-A is a question of law, and the Commissioner was directed to refer the question to be laid before a Full Bench. The Full Bench held that section 25-A does not of necessity demand a partition by metes and bounds. Section 25 contemplates that there should be firstly, a finding that the Hindu joint family as such has disrupted and secondly, a finding that the joint family has been divided among the various members or groups of members in definite shares. It is not enough that mere disruption of the joint family should be proved. There must also be, by content or otherwise a definite ascertainment of the shares of the different members composing the Hindu family. In case of a business, the only reasonable meaning of the words "partitioned" would be "partitioned in definite shares."³

Partial Partition.—Section 25-A has no application to partial partition. In cases where the members of a joint family agree to divide among themselves a certain portion of the joint family property leaving their status and the rest of

¹ *Nathu Lal v. Commissioner of Income-tax, Punjab*, A. I. R. 1927 Lahore 616; 2 I. T. C. 429.

² 7 I. T. L. J. 199.

³ *Sher Singh Nathu Ram v. Commissioner of Income-tax, Punjab*, 9 I. T. L. J. page 80, 1935 F. B.

the property as before, they cannot be assessed as separated members.¹

Proof of.—A mere recital in a deed though registered, is yet not sufficient to prove actual partition. Where a Hindu joint family carried on joint business and were assessed as such for a number of years, and then alleged disruption of the family on the strength of a deed, an agreement which made mention of the separate character of three businesses which had all along been carried on by the family, it was held that on evidence the Income-tax Officer was justified in holding that the deed had been fabricated for the purposes of income-tax and did not prove partition.² But where a joint Hindu family consisting of four brothers carried on joint business, but on their death, their sons and grandsons carried on separate business, and were separate in mess since 15 or 16 years, living in separate houses, costs of messing and expenses of marriages being separate, and in the books of business there stood no capital account in the name of the joint family, it was held that the joint family had ceased to exist and that the main business was liable to be taxed as an unregistered firm.³

Question of fact.—Whether or not a joint Hindu family has been dissolved or not is a question of fact, and the

¹ A. I. R. 1934 All. 217 supra ; Nathu Mal v. Commissioner of Income-tax, Punjab, 2 I. T. C. 429 ; A. I. R. 1927 Lahore 616.

² Mathra Das v. Commissioner of Income-tax, Punjab, A. I. R. 1933 Lahore 815 ; 7 I. T. C. 34 ; Jathushah Nathushah v. Commissioner of Income-tax, Punjab, A. I. R. 1932 Lahore 700 ; 7 I. T. L. J. 175 ; Messrs. Chotey Lal Murlidhar v. Commissioner of Income-tax, U. P., 4 I. T. C. 7.

³ Gangasager Ananda Mohan Shaha v. Commissioner of Income-tax, Bengal, A. I. R. 1930 Cal. 178 ; 4 I. T. C. 55.

High Court cannot enter into it.¹ Nor can an assessee who has been assessed as the head of a joint Hindu family and has before such assessment, submitted to all the notices issued and proceedings carried on therein, can be allowed to raise the plea of dissolution in appeal.²

Joint family and firm.—A firm involves a contractual relationship between the various persons that enter into a contract to constitute it. A joint Hindu family cannot be created by contract. The relationship of a joint Hindu family is based on status under the personal law to which Hindus are subject.³ A joint Hindu family cannot therefore be registered as a firm.⁴ But where after a partition in a joint Hindu family, the separated members form themselves into a firm, section 26 will come into operation and the members will be assessed as a firm and not under section 25-A.⁵

At the time of making an assessment.—These words mean “when time comes to make assessment.”⁶ A question arises whether section 25-A (2) would apply only when a claim is made at the time of making an assessment

¹ Peare'lal and others v. Commissioner of Income-tax, Punjab, A.I.R. 1933 Lahore 827 ; 7 I.T.C. 31 ; Sardar Raja Singh Obera v. Commissioner of Income-tax, Punjab, 1934 I. T. L. J. 219.

² Karam Chand v. Commissioner of Income-tax, Punjab, A. I. R. 1931 Lahore 601 ; 5 I. T. C. 313.

³ A. I. R. 1933 Lahore 827.

⁴ Peare Lal v. Commissioner of Income-tax, I. T. C. 31 ; 7 I. T. L. J. 192.

⁵ Beli Ram and others v. Commissioner of Income-tax, Punjab, 1935 I. T. L. J. page 300.

⁶ Maharaja of Darbhanga v. Commissioner of Income-tax, Behar and Orissa, A. I. R. 1933 Pat. 123.

and not where the claim is made at some earlier time. It seems that the words only imply that the assessee can make a claim at any time before the final assessment is made.

Claim—The Income-tax Officer can act under this section only when a claim is made. He has no jurisdiction to apply section 25-A when no claim is made.

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

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Change in constitution of a 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

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Change of ownership of business.

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.

History.—This section was substituted for the original section by the Income-tax Amendment Act III of 1928.

At the time of making an assessment.—These words mean when the time comes for making the assessment and not the commencement of the year of assessment.¹

Change in the constitution of a firm.—As amended by the Indian Income-tax (Amendment) Act, 1928 (III of 1928), section 26 now consists of two parts, the first part dealing with changes in the constitution of a firm and the second part with changes in the ownership of a business, profession or vocation. Under section 26 (1) the assessment 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 the share of the profits of the year proportionate to his interest in the firm at the time of making the assessment. For example, if 'A' happens to be a member of a firm when an assessment is made in the year 1922-23, even if 'A' has newly succeeded to the partnership just before the assessment is made, he is deemed, for the purposes of both income-tax and super-tax, to have received out of the profits of the year 1921-22 (which are the profits assessable in the year 1922-23) the share to which he would have been entitled had his share in the firm been the same as it was in 1922-23 when the assessment was made.²

New firm.—Section 26 (1) deals with the case of a change in the constitution as also to the case of a newly started firm during the previous year. An assessee is entitled to an adjudication of the question whether a new firm has been constituted so as to attract the operation of section 26 and he cannot be deprived of his legal right merely on the ground that an adjudication on this question would tend to affect the decision of the Income-tax Officer under section 26A against which an appeal is competent.³

¹ *In re* Maharaja of Darbhanga, A. I. R. 1933 Pat. 123 ; Best & Co. Ltd. v. Commissioner of Income-tax, Madras, 7 I. T. L. J. 210.

² I. T. Manual, para 97.

³ *Beli Ram & Brothers v. Commissioner of Income-tax, Punjab*, 1935 I. T. L. J. 194.

Rate of tax—Super-tax, Change in the constitution etc.—It was held by the Allahabad High Court that where a registered firm was converted into a limited company, and was not previous to such conversion, liable to pay super-tax as such, and the limited company was assessed to super-tax, in respect of profits made before the conversion, the conversion of the firm into company did not, in any way, affect the profits made by the firm before the conversion of the legal liability to income-tax which already existed. It was held that the effect of section 26 was only to make the changed owner liable to tax and did not affect the rate, as tax was under section 3 to be charged in every year on the profits and gains made in the previous year.¹ But this view is no longer good law. The Allahabad High Court had proceeded on the reasoning that the successor would be liable to tax just in the same way and to the same extent as the predecessor would have been liable if he continued to carry on the business up to the time of making the assessment. It has been held by the Privy Council that section 26 authorises the levy of tax on the successor on the basis of the income of the previous year, as if he was carrying on the business throughout the previous year, and as if he had received the profits of the business throughout the previous year. It was therefore held that when an unregistered firm which was converted into a registered firm or company, the company would be taxed on a flat rate applicable to the company or the registered firm and not the rate applicable to the unregistered firm. If the successor is liable to super-tax, super-tax would be levied. Conversely, if the successor is not

¹ Messrs. Sutherland & Co., Ltd. v. Commissioner of Income-tax, U.P., 23 M. L. J. 655 ; 21 T. C. 478.

liable to super-tax, no super-tax would be levied, even if the predecessor was so liable.¹

Succession.—This sub-section which incorporates the Privy Council decision in the Western India Turf Club case, applies only to cases in which a business profession or vocation has changed hands. The assessment must be made on the successor as though he had been carrying on the business, profession or vocation and as if he had received the whole of the profits for the year. The calculation of the profits should of course be made with reference to the state of affairs in the accounting year but the rate of tax to be applied will be that applicable to the successor.

Where one person succeeds to several businesses, a single assessment should be made on the successor in respect of the profits of all his predecessors and of himself, if he existed or did business in the previous year, taken together. Losses of any predecessor should be set off against the profits of the others or of the successor.

The question whether a succession has taken place is a question of fact which must be decided with reference to the facts of the particular case, but it may be laid down that there cannot be succession to part of a single business. It frequently happens that one person is conducting two or more separate businesses to each of which there can be a succession. If the particular business is separable as a whole from the other activities of the assessee, there can be a succession to it.

When in the year in which the first assessment is made after succession to a business has occurred, the successor wishes to adopt a different accounting period from his predecessor's, the request should be treated as involving a change of accounting period. If the result of this change is to leave an interval between the end of the last complete accounting period of the predecessor and the beginning of the first accounting period of the successor, the procedure prescribed in paragraph 6 above for the assessment of an assessee who has been permitted to change his accounting period should be followed in all respects, and the nature of the change of accounting period permitted, and the conditions on which permission is

¹ The Commissioner of Income-tax, Bombay v. The Western India Turf Club Ltd., 2 I. T. C. 490 P.C.; 52 Bom. 123.

granted should be clearly recorded by the Income-tax Officer in the assessment order.

When assessment has been made under section 26 (2) on the successor to a business on the profits of the predecessor and it is found that the profits of the predecessor in the year before the year of succession have escaped tax, wholly or in part, whether the succession took place before or after the assessment of the predecessor in the previous year, an assessment may be made under section 34 on the successor and not the predecessor, because the expression "previous year" in section 26 (2) must refer to the "previous year" as defined in section 2 (11) of the Act for the purpose of the assessment to be made and not to the year previous to that in which the assessment is made, if that is different. The fact that the succession resulted in a change in the status of the assessee does not alter the situation.¹

The plain meaning of the word succeeded in such capacity is that if there is a business, profession or occupation which was formerly carried on by a person and that has now been taken over directly by another person who continued that business, the transference of ownership, whether it is by operation of law or by transfer *inter vivos*, is a succession.² Change of ownership is enough to constitute succession.³

The word "succeed" as used in this section connotes a transfer of ownership and the person who succeeds another must by such succession become the owner of the business which his predecessor was carrying on and which he, after the succession, carries on in such capacity, that is the capacity as owner. Where a Hindu family consisting of father and

¹ I. T. Manual, para 98, pages 246-247.

² *Maharajadhiraj of Darbhanga v. Commissioner of Income-tax, Behar and Orissa*, 7 I. T. L. J. 319 ; A. I. R. 1933 Pat. 124 ; *Best & Co. v. Commissioner of Income-tax, Madras*, 7 I. T. L. J. 210 F. B. ; A. J. R. 1932 Mad. 434 F. B. ; A. I. R. 1932 Sindh 289.

³ A. I. R. 1933 Sindh 114.

son carries on a family business and the father dies, the son becomes entitled to the entire business by survivorship and cannot be assessed under section 26 (2).¹ The section was evidently intended to secure to Government tax based on the earning of a business as for a full year notwithstanding the transfer of the business from one person to another before the expiry of the year provided of course that the business was continued by the transferee. If the transferor and the transferee were separately taxed for the profits earned by them during the period each of them carried on the business, the incidence of taxation would be seriously affected, and if the income for the whole year though enjoyed by two different persons was liable to be taxed at the end of the year, it is but proper that the person who is in possession of the business at the end of the year should be made responsible for it leaving it to him to settle the equities between him and the transferor with regard to the apportionment of the taxation. Even where the Government takes over the private business of an assessee, viz., takes over one of the Railways from a Railway Company under its statutory powers, there is succession and section 26 is applicable.²

Where a person carrying on a business is served with a notice under section 22 (2), but before the expiry of the period for furnishing the return and before the return is furnished he dies, and is succeeded in such capacity by another person, the latter is taxable under section 26 (2). The word assessment is not confined in the statute to the definite act of making the assessment, and where a notice has been given under section 22 (2) to a person to furnish a

¹ *Jupudy Kesawa Rao v. Commissioner of Income-tax, Madras*, 1936 I. T. L. J. page 13.

² A. I. R. 1932 Sind 189.

return in the prescribed form the process of assessment has begun and continues until some order of assessment is made.¹

Any Business.—The words “any business” do not mean “each and every business” carried on by the former owner of a business. Where a company carrying on several businesses transfers one of them to another, the latter is successor to the former for the purposes of taxation of the business transferred.² But in order that a person should be held to have succeeded another person in carrying on a business, profession or vocation it is necessary that the person succeeding should have succeeded his predecessor in carrying on the business as a whole. Where the business is split up and thereafter another person carries on part of the business, he does not succeed his predecessor. Further, where there is no continuity in carrying on the business and when one business has come to an end and after a time another business is started with the same assets and under the same conditions as the old business, the persons carrying on the new business do not succeed, those who had carried on the old business.³ The question whether the succession has been to a part of a business or to one entire business is a question of fact.⁴

The conversion of a private partnership into a company creates a succession by the company.⁵ So where a business

¹ The Maharaja of Darbhanga v. Commissioner of Income-tax, Behar and Orissa, 1934 I. T. L. J., 169 P. C.

² Best & Co. v. Commissioner of Income-tax, Madras, 7 I. T. L. J. 210 F. B., 55 Mad. 822.

³ Commissioner of Income-tax, Burma v. N.N. Firm, 1934 I. T. L. J. 80 F. B.; A. I. R. 1934 Rang. 113 F.B.

⁴ A. I. R. 1932 Sind 189.

⁵ Ryhope Co. Ltd. v. Foyer, 1 I. T. C. 343.

is sold by an individual to a company there is no discontinuance of business, but succession.¹

Where a joint family business split up and parts are allotted to and continue to be separately carried on by its separated members with the same assets and even in the same premises, there is no case of succession.² But where at the time of partition of a joint Hindu family, the business falls to the share of one member, he is successor within the meaning of section 26 (2).³

New business.—The question whether there has been a succession in a particular case, is a question of fact,⁴ also the question whether in any particular case, the business is identical with the former business.⁵ To constitute succession, there must be a close identity between the business in the new proprietorship and the business in the former proprietorship.⁶ If the gap between the business under the new proprietor and the business under the former proprietor is such that the latter could not be said to have stepped into the shoes of the old business, but to have started a new business, the section has no application, but where the gap is such that the Income-tax Officer is satisfied that there is only a case of succession to the old business, proceedings do

¹ Barlett v. Commissioner of Inland Revenue, 7 T. C. 229.

² A. L. R. 1934 Rang. 1.

³ A. I. R. 1929 Mad. 769 F. B.

⁴ Thomson and Belfour v. Le Page 8 T. C. 541 at 549, 550.

⁵ Michael Faraday, Rodgers and Eller v. Carter, 11 T. C. 565 at 574; Alexander Fergusson & Co. Ltd. v. Askam, 4 T. C. 36; Watson Brothers v. Lothian, 4 T. C. 441.

⁶ Reynold & Sons & Co. Ltd. v. Oyston, 15 T. C. 301; Shipstone v. Morris, 14 T. C. 13.

not have to be started *de novo*, and the Income-tax Officer can act under this section.¹

Nor is it necessary for the validity of the proceedings that the succession should have been in the year of assessment or the previous year. The Act provides for an assessment of the date on which the person carrying on the business has been succeeded by another person. The only important dates are the date of assessment and the year of account.² Where a firm purchased another under agreement and carried on the business of the former, but no separate accounts were opened in the purchasing firm's books treating the purchased firm as an asset, and the purchase money was provided out of the private property of the individual partners it being found as a fact that the intention of the purchasing firm was to embark on a new venture, it was held that the firm did not succeed the old firm³ and must be assessed as an unregistered firm.

Successor, Liability under section 34.—A notice under section 34 attracts the operation of sections 23 and 26.⁴

Liability.—But sub-section (2) is not confined to cases of default of a succession to somebody who was himself liable to tax, that is to say the section is not confined only to cases of succession *inter vivos*.

The word 'assessment' is not confined in the statute to the definite act of making an order of assessment, but

¹ A. I. R. 1934 Mad. 63.

² A. I. R. 1934 Mad. 63.

³ *Martin & Co. v. Commissioner of Income-tax, Bengal*, 4 I.T.C. 478.

⁴ *Commissioner of Income-tax, Madras v. Machel Achi*, A. I. R. 1934 Mad. 63.

refers to 'the course of any assessment.' Where a notice has been given under section 22 (2) to a person to furnish within the time specified a return in the prescribed form the process of assessment is begun. The words 'at the time of making the assessment' in section 26 (2) therefore mean in the course of the process of assessment and if a notice was duly served on the late assessee the process of assessment should be deemed to have begun and the tax officer is enabled to find, if the facts justified the finding, that the person on whom a notice had been served had carried on business and had been succeeded in such capacity by another person : 1934 P. C. 30 Rel on.¹

In the ordinary way deceased person's estate cannot be fixed with tax in respect of a period for which no return has been made and in respect of which there has been no default in making a return, nor can a representative of such be fixed with tax in respect of the profits of that period received by the deceased person.²

An assessee is entitled to an adjudication of the question whether a new firm has been constituted so as to attract the operation of section 26, and he cannot be deprived of his right merely on the ground that an adjudication on this question would tend to affect the decision of the I. T. O., under section 26-A against which no appeal is competent.³

¹ P. 201 C. 2 ; P. 202 C. 1.

² P. 202 C. 2. Maharajadhiraj of Darbhanga v. Commissioner of Income-tax, Behar and Orissa, A. I. R. 1934 P. C., page 200.

³ Beli Ram and Brothers v. Commissioner of Income-tax, Punjab, 1935 I. T. L. J., page 194.

Set-off of loss of successor against profit of Predecessor.—Their Lordships of the Madras High Court observed :—

“ Section 26 enacts that ‘ Where any change occurs in the constitution of a firm, or where any person has succeeded to any business, profession or vocation, the assessment shall be made on the firm as constituted, or on the person engaged in the business, profession or vocation as the case may be at the time of making the assessment.’ The question as to what should happen when there are two firms and one firm takes over the business of the other has been considered by the Privy Council in *Western India Turf Club, Ltd. v. Commissioner of Income-tax*. In that case the Western India Turf Club which was originally an unregistered association was converted into a limited company on the 1st of April 1925, the object of the company being to take over the assets, and liabilities of the Western India Turf Club. The question arose, at what rate the company should pay the super-tax from April 1925? The Act says that the super-tax has to be paid in respect of the total income for the previous year. But there was no total income for the previous year and the question was how it should be taxed. Their Lordships of the Privy Council pointed out that section 26 of the Act removes the difficulty. As a matter of fact, their Lordships said that for the purposes of taxation the new company should be deemed to have been in existence in the previous year. With reference to the decision, in the matter of *Begg Sutherland & Co., Ltd.*, Their Lordships of the Privy Council stated that if the question there decided should again arise that decision would require further consideration. In that case what was decided was that the old firm should be taken to have continued till the year of assessment although there was a new firm. That view Their Lordships of the Privy Council were not disposed to endorse. The view taken by the Bombay High Court in *Western India Turf Club, Ltd. v. Commissioner of Income-tax, Bombay*, which was confirmed by Their Lordships of the Privy Council was that for purposes of taxation the new firm should be deemed to have been in existence in the previous year. To carry out this view there was an amendment of the Income-tax Act (Act III of 1928).

“ Here, there is no dispute about the facts. The partners, after the retirement of Ismail, are the same in both the firms and there is no difference as regards shares ; and it is conceded that there was practically

an amalgamation. We think therefore that the tax ought to be levied on the footing that there is only one assessee and that under section 24 the loss of the Ellore firm should be set-off against the profits of the Madras firm and the tax should be only on the balance. We answer the reference accordingly."¹

Foreign Business.—An assessee firm had a branch or agency operating at Ipoh in Federated Malay States. There had been an older firm there but this was wound up and the assets in the shape of outstandings divided between the partners. Part of these assets fell to the share of the partners in the assessed firm and were shown as credit in the general balance. During the year for which the firm was assessed Ipoh branch remitted Rs. 1,20,000 in all to British India. Income-tax Department acting upon the presumption that to the extent profits were made at Ipoh this remittance was composed of these and declined to accept the contention that the remittance was derived from realization of the old firm's outstandings and so was mainly capital. The assessed firm did not prove by means of accounts which were duly examined that the remittances were not composed of profits liable to tax.

Held : that the assessment was good in law.²

Rapid succession and accidental acquisition and amalgamation.—Succession does not cover the case of an accidental acquisition by a trader, who continues in business of the customs left by another who goes out of the field.³

¹ Mahanund Hassana Labbai & Co. v. Commissioner of Income-tax, Madras, 3 I. T. C. 434.

² Kumarswamy Sastri, Walsh and Curgenvin, JJ. A. I. R. 1930 Madras, page 104. *In re* P. L. S. K. B., A. I. R. Mad, 1930 page 104.

³ Thomson & Balfour v. Lepage, 1924 A. C. 27 ; Watson Brothers v. Lothian, 4 T. C. 441.

Where two or more businesses are amalgamated, the assets on the combined business will be computed on the combined profits of the separate businesses until sufficient time has elapsed to allow of the computation being entirely on the profits arising since the amalgamation.

In case of rapid transfers or semitransfers, where several transfers intervene in a short time it will be a question of fact whether there has been a succession.

26-A. (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.

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Procedure in registration of firms.

(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.

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History.—This section was introduced by the Income-tax (Amendment) Act XXI of 1930.

See notes under section 2 (14).

For cancellation of registration see sections 23 (4) and 28.

Rule 2. Any firm constituted under an instrument of partnership specifying the individual shares of the partners may, for the purposes of clause (14) of section 2 of the Indian Income-tax Act, 1922 (hereinafter in these rules referred to as the Act), register with the Income-tax Officer the particulars contained in the said instrument on application in this behalf made by the partners or by any of them.

Such application shall be made—

- (a) before the income of the firm is assessed for any year under section 23 or
- (b) if no part of the income of the firm has been assessed for any year under section 23, before the income of the firm is assessed under section 34, or
- (c) with the permission of the Assistant Commissioner hearing an appeal under section 30, before the assessment is confirmed, reduced, enhanced or annulled, or, if the Assistant Commissioner sets aside the assessment and directs the Income tax Officer to make a fresh assessment, before such fresh assessment is made.

Rule 3. The application referred to in rule 2 shall be made in the form annexed to this rule and shall be accompanied by the original instrument of partnership under which the firm is constituted together with a copy thereof ; provided that if the Income-tax Officer is satisfied that for some sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by one of the partners to be a correct copy, and in such a case the application shall be accompanied by a duplicate copy.

FORM 1

Form of application for registration of a firm under section 2 (14) of the Indian Income-tax Act, 1922.

To

THE INCOME-TAX OFFICER,

Dated 19 .

I / we beg to apply for the registration of my/ our firm under section 2 (14) of the Indian Income-tax Act, 1922.

2. The original/A certified copy of the instrument of partnership under which the firm is constituted specifying the individual shares of the partners together with a copy/duplicate copy is enclosed. The prescribed particulars are given below.

3. I/ we do hereby certify that the profits of the current year will be actually divided or credited in accordance with the shares shown in this partnership deed.

Signature

Address

Name and address of the firm.	Names of the partners in the firm with the share of each in the business.	Date on which instrument of partnership was executed.	Date, if any, on which the instrument of partnership was last registered in the Income-tax Officer's office.	Remarks.

I/ we do hereby certify that the information given above is correct.

Signature (s)

Rule 4. (1) On the production of the original instrument of partnership or on the acceptance by the Income-tax Officer of a certified copy thereof, the Income-tax Officer

shall enter in writing at the foot of the instrument or copy, as the case may be, the following certificate namely :—

“This instrument of partnership (or this certified copy of an instrument of partnership) has this day been registered with me, the Income-tax Officer, for _____ in the province of _____ under clause (14) of section 2 of the Indian Income-tax Act, 1922. This certificate of registration has effect from the _____ day of April 19 _____ up to the 31st day of March 19 _____.”

(2) The certificate shall be signed and dated by the Income-tax Officer who shall thereupon return to the applicant the instrument of partnership or the certified copy thereof, as the case may be, and shall retain the copy or duplicate copy thereof.

Rule 5. The certificate of registration granted under rule 4 shall have effect from the date of registration.

Rule 6. A certificate of registration granted under rule 4 shall have effect up to the end of the financial year in which it is granted but shall be renewed by the Income-tax Officer from year to year on application made to him in that behalf and accompanied by a certificate signed by one of the partners of the firm that the constitution of the firm as specified in the instrument of partnership remains unaltered. Such application shall be made within the time and subject to the conditions, if any, which are specified in clause (a), clause (b), or clause (c), as the case may be, of rule 2.¹

An application for registration of a firm has to be made in the prescribed form. The Income-tax Officer is not bound to grant an application for registration, but an order refusing

¹ Rules 2—6, I. T. Manual, pages 77 to 79.

to register a firm has been made appealable under section 30 (1) by the Income-tax Act XVIII of 1933. Section 30 provides a period of 30 days within which an appeal is to be ordinarily preferred. It may be that the order refusing to register a firm may be passed long before the final assessment is made under section 23. In such a case an assessee who wants to get the benefit of registration should prefer an appeal against the order refusing to register the firm and prefer another appeal from the final assessment when the same is made. The Assistant Commissioner has no doubt a discretion to admit an appeal after the expiry of the period of 30 days fixed by section 30 (2), but the assessee may lose his right to appeal from the interim order refusing to register the firm, in case the Assistant Commissioner does not choose to extend the period of limitation. Prior to 1933 there was no appeal from an order to register a firm, and a question arising out of refusal to register could therefore not be referred to High Court.¹

Firm.—It is a firm that can be registered, and no registration can be granted when there is no firm in existence.

Where the assessee, assessed as the sole concern of the father, in the course of assessment proceeding, applied for registration as a firm of himself and his major son, but the two minor sons were left out, nor was there any proof of any capital laid out by the son, nor any entries of partnership in the accounts, held that there was no partnership and that the assessment made was legal as there was evidence before

¹ See *Haji Alijan v. Commissioner of Income-tax, Punjab*, 1934 I. T. L. J., page 295; *S. Lal Chand v. Commissioner of I. T., Bengal*, 1935 I. T. L. J., page 446 at 447.

the Income-tax Officer for coming to the conclusion at which he arrived.¹

✻

A joint Hindu family is not a firm, as in the case of a joint Hindu family, the relationship is based on status and not on contract and therefore a joint Hindu family cannot be registered as a firm.²

A firm cannot in view of section 239 of Contract Act be a partner in another firm, as according to Income-tax Act section 2 (9) partner and partnership have the same meaning for the purpose of Income-tax Act, as they have for the purposes of the Contract Act.³

A firm cannot legally be a partner in another firm. But it does not necessarily follow that the income received by the firm from investments in another firm is not part of its own income. A firm which has got itself registered under section 26-A, Income-tax Act, is a distinct legal entity recognised by law, separate from the individuals who are its partners or proprietors. If such a firm has some funds of its own, and a part of its funds are invested in some other firm under a mistaken view of the law that the firm can be a partner in the other firm, and some profit is earned on that income and is paid over to the firm and received by it as its own income, the money belongs to the firm and it is income received by that firm for purposes of income-tax. But if money is taken

¹ Abowath Brothers v. The Commissioner of Income-tax, Burma, 7 I. T. C. 38; 1935 I. T. L. J. page 45.

² Pearelal and others v. Commissioner of Income-tax, Punjab, 7 I. T. L. J. 192.

³ See Partnership Act 1932. S. Lal Chand v. Commissioner of I. T., Bengal, 1935 I. T. L. J. page 446.

by the partners out of the firm and re-invested by them in other firms, then it is their money and the profits earned on it belong to them in their individual capacities.¹

It is not possible in law for one firm in its corporate capacity to enter into a partnership with one or more other persons in their individual capacity.² Nor can a partnership be formed by an association of a joint Hindu family with a firm.³

Nor can a firm which is not constituted under an instrument of partnership be registered under section 26-A.⁴ So also a firm which is registered under a deed of partnership for a term of years, but the term has expired, cannot be registered after the expiry of the term, even though the business of the firm may have been continued in the same conditions under which the firm was originally registered.⁵

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

Cancellation of assessment when cause is shown.
P. 86.

¹ Jai Deyal Madan Gopal v. Commissioner of Income-tax, U.P., 7 I. T. L. J. page 88 ; 6 I. T. C. 225.

² S. Lal Chand v. Commissioner of Income-tax, Bengal, 1935 I. T. L. J. page 446.

³ Prabhu Lal Pearey Lal v. Commissioner of Income-tax, U.P., 1934 I. T. L. J. page 46.

⁴ Messrs. Gopu Balakrishnayyar & others v. Commissioner of Income-tax, Madras, 1934 I. T. L. J. 147 F. B.

⁵ Commissioner of Income-tax, Madras v. M. V. Krishna Ayer and Sons, A. I. R. 1929 Madras, page 67 F. B.

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.

Sufficient Cause.—The words “satisfies” and “sufficient cause” are identical with the words in Order 9, Rule 9, Order 41, Rule 19, C. P. C., and section 5 of Indian Limitation Act. The words should therefore receive similar interpretation as he has been put upon them in these enactments.

Sufficiency of cause is a question of fact dependent on the circumstances of each case. But its determination essentially depends on the exercise of judicial discretion, and whether the cause shown is sufficient or not in the circumstances of the case should be determined on sound judicial principles and not capriciously.¹

It was held by the Nagpur Chief Court in 1934 I. T. L. J. that the question whether the discretion in deciding whether there is sufficient cause or not, has been properly exercised in a reasonable manner invariably involves a question of law. The same view has been held in *P. K. N. P. R. Chettyar Firm v. Commissioner of Income-tax, Burma*.²

¹ *Commissioner of Income-tax, U. P. and C. P. v. Laxminarain Badridas*, 1934 I. T. L. J. page 121 ; *A. I. R. Nag. 1934* page 183 ; *Naneh Mal Janki Das v. Commissioner of Income-tax, Punjab*, 1934 I. T. L. J. page 199 ; *A. I. R. 1934 Lahore* page 983.

² 4 I. T. C. 87.

But in A. I. R. 1934 Lahore 983 cited above, it was held that the question whether there is sufficient cause or not is essentially a question of fact and does not involve any question of law. The same view was held by Madras High Court in Siva Pratap Bhattadu and another v. Commissioner of Income-tax, Madras.¹ It is submitted that the latter is the more correct view. It is an established principle of interpretation of statutes, that where a discretion is vested in a tribunal, that tribunal is entitled to exercise its discretion in the right way as well as in the wrong way, and so long as the discretion has been in fact exercised, the High Court cannot interfere. The case would be different if it appears from the record that no discretion has been exercised.² It has been held by the High Court of Allahabad that the question whether the assessee was prevented by sufficient cause from submitting his return under section 22 (1) is a mixed question of law and fact, the question of law being whether the facts alleged by the assessee, if accepted as true, may be treated as sufficient cause within the meaning of section 27.³

The assessee did not file a return of income, after service of notice under section 22 (2) and in spite of extension granted twice on the ground of the proprietor's absence, and assessment was accordingly made under section 23 (4). The assessee applied for cancellation under section 27, on the ground that the accounts had been produced in a criminal case. Assessment was made on 25th January 1928 while the criminal case was disposed of in October 1927, *i.e.*, long before assessment.

¹ I. T. C. 323.

² Chitales' C. P. C., Vol. 1, page 997 and cases cited in it.

³ Messrs. Kajori Mal Kalyan Mal v. Commissioner of Income-tax, U. P., 3 I. T. C. 451.

The Income-tax Officer refused to review the order.

It was held, that the Income-tax Officer was perfectly justified as there was no sufficient cause for non-submission of return, as contemplated by section 27.¹

The mere fact that the accounts of the assessee were not audited within the time fixed by the Accountant nor within the time fixed by successive extensions of time granted by the Income-tax Officer is not sufficient to entitle the assessee to an order under section 27 setting aside an *ex parte* order.²

Mere forgetfulness is no reason for not filing the return within time and is not a sufficient cause for reopening an *ex parte* assessment.³

Burden of Proof.—The burden of proving sufficient cause is on the assessee. If he fails to give evidence by which the I. T. O. is satisfied as to the existence of sufficient cause, the application under section 27 cannot be entertained.⁴

Appeal, Question of Merits.—In an appeal against an order refusing to reopen an assessment under section 27, an

¹ Messrs. Ram Kuar Mohan Lal v. The Commissioner of Income-tax, U. P., 1929 A. L. J. 536 ; 1191 C. 569 ; 30 C. L. J. 1034 ; 3 I. T. C. 375.

² Manbhum Transport Co. Ltd. v. Commissioner of Income-tax, Bihar and Orissa, 7 I. T. L. J., page 31.

³ Lalit Kumar Mitra v. Commissioner of Income-tax, Bihar and Orissa, 140 I. C. 712.

⁴ Abdubari Choudhri v. Commissioner of Income-tax, Burma, A. I. R. 1931 Rang. 194

Assistant Commissioner is not competent to enter into the merits of the assessment under section 23 (4),¹ and the only question before him for determination is whether the assessment can be reopened.²

Reasonable Opportunity.—What is a reasonable opportunity is a pure question of fact with reference to the facts and circumstances of each case. What is required is that the assessee should be allowed enough time within which he is to comply with the requirements of a notice issued to him and the case may be adjourned at his request when necessary.³

Who can apply under section 27.—Section 27 speaks of an assessee, a word which is defined by section 2 (2) to mean a person by whom income-tax is payable. The question arises as to whether assessee means the person originally assessed or includes his heirs and successors. The Calcutta High Court has held that the heirs of a deceased assessee cannot apply under section 27.⁴ But the Oudh Chief Court,⁵ and the Patna High Court,⁶ have held that heirs of a deceased assessee can apply under section 27. The Bombay High Court had held that privilege enjoyed by an assessee should be extended to his heirs and administrators.⁷

¹ *Jhuri Mina v. Commissioner of Income-tax*, U. P., 3 I. T. C. 248.

² A. I. R. 1932 Cal. 411 F. B.

³ *In re Sachidanand Sarla*, 3 Pat. 664.

⁴ *Mitchel v. Macmet & Co.*, 31 C. W. N. 630.

⁵ *In re Govind Saran*, A. I. R. 1927 Oudh 465.

⁶ *Maharaja of Darbhanga v. Commissioner of Income-tax, Behar and Orissa*, A. I. R. 1930 Pat. 91.

⁷ *Ellis v. Reid*, A. I. R. 1931 Bombay 333.

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

P. 86, 87.
Penalty for concealment of income or improper distribution of profits

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 the 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.

has deliberately furnished inaccurate particulars of such income and has thereby returned it below the real amount, he may direct that the assessee shall pay a penalty not exceeding the amount of the tax which would have been avoided if the return had been accepted as correct. If 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 the Act governing such distribution and any partner has thereby returned his income below its real amount, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may impose similar penalty on the partner concerned and no refund or other adjustment shall be claimable by any other partner on this account.

Penalty under section 28 is leviable in the course of any proceedings under the Act provided that the facts justifying the imposition of a penalty under the section are established. The Act, however, does not authorise the imposition of a penalty in the course of proceedings under section 34 for a supplementary assessment in respect of any concealment of income in the course of proceedings in connection with the original assessment in the case concerned (cf. Allahabad High Court decision in the case of *Mayaram Durga Prasad versus Commissioner of Income-tax, United Provinces*). The offender will, however, be liable to a prosecution under section 52 of the Act, or any section of the Indian Penal Code other than section 177 thereof referred to in section 52 of the Income-tax Act.

Clause (4) of section 28, however, provides that where a penal assessment under that section is imposed by the revenue authorities, no criminal prosecution for an offence shall be instituted on the same facts. It is obviously not desirable that there should be room for a possible conflict between the revenue and judicial authorities, and it is also unreasonable that a double punishment should be provided for.

A criminal prosecution cannot, under section 53 (1) of the Act, be instituted except at the instance of an Assistant Commissioner. In most cases action under section 28 will be effective although in more serious cases a prosecution might be launched.¹

¹ I. T. Manual, para 87, pages 235-236.

“The ingredients which go to make up the conditions precedent to the infliction of a penalty are: (1) The Income-tax Officer, in the course of a proceeding, must be satisfied that an assessee has deliberately furnished inaccurate particulars of his income, and has thereby returned it below the real amount; (2) There must be a determination by the Income-tax Officer that the assessee has furnished inaccurate particulars of the income; and (3) a refusal on the part of the taxing officer to accept the income returned, as correct. In this particular case the return of income submitted has been accepted as correct and has formed the basis of the taxation. Again, there is no independent enquiry by the Income-tax Officer as to the income of the assessee, and there is, therefore, nothing to show that a concealment has been attempted at. The proceedings, which terminated on the assessment of the income of the figure Rs. 2,650 were no longer before the Income-tax Officer. The Income-tax Officer started fresh proceedings for the assessment of the income that had escaped assessment under section 34 of the Income-tax Act. It has been held by the Court that when proceedings are taken under section 34 of the Indian Income-tax Act, it is not open to the assessee to show that he should have been assessed at a lower figure of the income than was the case, before the proceedings under section 34 were started. The reason given was that the fresh proceedings were meant to assess the escaped income, and not to assess the income which had already been assessed.” See *Seth Kasinath Bagla v. Commissioner of Income-tax*, U. P.¹

In this case the assessee was assessed to a certain sum on submitting a return of his income, but proceedings were

¹ *Messrs. Mayaram Durga Prasad v. Commissioner of Income-tax*, U. P., V I. T. C. 471 at 473-74.

taken against him under section 34, wherein he stated his correct income and was taxed accordingly, but a penalty under section 28 was also imposed for having deliberately made a wrong return previously. It was held that the penalty was wrongly imposed. The proceedings that started on the previous return in this case had terminated when the assessment was made. The return made in subsequent proceedings under section 34 was correct. The case is therefore no authority for thinking that section 28 has no application to proceedings under section 34. Provisions of section 28 relating to penalty apply to proceedings of reassessment under section 34.¹ It is clear that the section is wide enough to cover the case of all proceedings, which may be taken under sections 22, 23, 30, 31, 32, 33, 34, 46, 48 and 49.

Levy of penalty by Assistant Commissioner.—The Assistant Commissioner is empowered to levy a penalty while hearing an appeal in respect of misstatements about the income made in the return submitted by the assessee to the Income-tax Officer.² But the Assistant Commissioner has no power to enhance a penalty levied by the Income-tax Officer.³

Levy of Penalty by the Commissioner.—This section empowers the Commissioner to levy a penalty, where none has been levied either by the Income-tax Officer or by the Assistant Commissioner. The original order of the Commissioner would be final, and not subject to a reference to the High Court, as section 66 does not empower the High

¹ Batak Prasad Khatri v. Commissioner of Income-tax, U. P., 5 I. T. C. 138.

² Pitta Ramaswamiah v. Commissioner of Income-tax, Madras, 2 I. T. C. 196.

³ *In re* Harkishna Das, 1931 A. L. J. 336.

Court to ask the Commissioner to state cause in respect of an original order passed by him.¹

Super-tax.—Section 28 does not apply to super-tax and as such no penalty can be imposed in respect of super-tax.²

Penalty, Quantum of.—The quantum of penalty within the statutory limit that ought to be imposed is a matter of fact and not of law, and is to be determined by the income-tax authorities.

The maximum penalty that can be imposed is a sum representing the difference between the tax on the income declared by the assessee and the tax on the income ascertained under the Income-tax Act in respect of which the assessment has been made.³

Inquiry under section 28.—At an enquiry held to determine whether a penalty ought to be imposed under section 28, the Income-tax Officer should not refuse such evidence as the assessee wants to produce purporting to disclose his real income, such evidence ought to be allowed not to vary the assessment, but to determine the amount of penalty.⁴

¹ Langi Bhagat Ramavtar v. The Commissioner of Income-tax, Behar and Orissa, 3 I. T. C. 418; A. I. R. 1930 Pat. 121.

² *In re* Gur Charan Prasad, 1931 A. L. J. 336.

³ K. M. O. Chettiar Firm v. Commissioner of Income-tax, Burma, 1934 I. T. L. J. page 75; A. I. R. 1934 Rang. page 95; A. A. R. Chettiar Firm v. Commissioner of Income-tax, Burma, 1934 I. T. L. J. page 197; 7 I. T. C. 334; A. I. R. 1933 Rang. 30.

⁴ A. I. R. Chettyar Concern v. Commissioner of Income-tax, Burma, 7 I. T. L. J. page 330 F. B.; 6 I. T. C. 385 F. B.

A penalty under section 28 can be imposed only when the proceedings resulting in the assessment of tax are valid.¹

It has been held that in determining the amount of income concealed by the assessee for the purpose of imposing the penalty under section 28, the Income-tax Officer is not restricted to the amount shown in the Assessee's own books to have been omitted from his return, and it is open to him to estimate the amount of income concealed and to levy penalty accordingly, if he has a reasonable cause to distrust the accuracy of the books. In such a case, the question whether the assessee had ample opportunity to meet the notice under section 28, or whether there was a trust fund as alleged by him, to which a particular item of income and profits related, are questions of fact on which no reference should be made to the High Court.²

Penalty and Prosecution.—Para 4 of section 28 bars a prosecution under section 52 and not section 51, so that an order imposing a penalty under this section is no bar to a prosecution for failure to produce the accounts in obedience to a notice under section 51.³

The liability of an assessee under section 28 for an incorrect return is not diminished because a later revised return filed by him is found to be correct.⁴

¹ Messrs. Sheikh Abdul Qadir Maracayer & Co. v. Commissioner of Income-tax, Madras, 3 I. T. C. 372; A. I. R. 1927 Mad. 1928.

² Butto Kristo Kamla Kanta Saha Firm v. The Commissioner of Income-tax, Behar and Orissa, 5 I. T. C. 122.

³ K. O. A. M. Hussain Ally & Co. 43 Mad. 498.

⁴ A. L. R. 1932 Mad. 161 F. B.

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.

Notice of demand.
P. 100.
R. 20.

Rule 20. The Notice of Demand under section 29 shall be in the following form :—

P. 100.

NOTICE OF DEMAND UNDER SECTION 29 OF THE
INCOME-TAX ACT, 1922.

To

1. You have been assessed for the year to income-tax amounting to Rs. (in addition to which a penalty of Rs. has been imposed), as shown in the copy of the assessment form sent herewith.

2. You have also been assessed to super-tax amounting to Rs.

3. You are required to pay the amount of Rs. on or before the to at when you will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (1) of section 30 of the Indian Income-tax Act, 1922, to the Assistant Commissioner of Income-tax at _____ within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (3) of section 30 and verified as laid down in that form.

Or

The assessment has been made under sub-section (4) of section 23 of the Indian Income-tax Act, 1922, because you failed to make a return of your income under section 22/to comply with a notice under sub-section (4) of section 22/to comply with a notice under sub-section (2) of section 23, and no appeal lies. But if you were prevented by sufficient cause from making the return or did not receive the notice (s) aforesaid, or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying, with the terms of the notice (s), you may apply to me within one month from the receipt of this notice under section 27, to cancel the assessment and proceed to make a fresh assessment.

6. The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income-tax Officer for copies of fresh chalans.

Dated

19

Income-tax Officer.

Place

Note.—The superfluous words in paragraph 5 should be deleted.

ASSESSMENT FORM.

ASSESSMENT FOR 193 —193 UNDER SECTION , ACT XI
OF 1922

District or Area.

Name of assessee
Address

Number in General Index
Number of miscellaneous record

Serial No	Detailed sources of income.	Amount of income.	Tax deducted at source.		Remarks.
			Rs.	a.	
1	Salary (including employee's provident fund contributions).	Rs.	Rs.	a.	
1A	Annual accretion (less employee's provident fund contribution) under section 58-A (f).				
2	Interest on securities				
3	Property				
4	Business				
5	Profession				
6	Other sources				
			Rs.	a.	Rs. a.
(i) Total income					
(ii) Deduction under section 7 (i) or on account of provident fund, to which the Provident Fund Act, 1897, applies.					
(iii) Deduction on account of recognised provident fund—					
(a) Contributions					
(b) Exempted interest					
(iv) Deduction on account of insurance premia					
(v) Deduct sums received as dividends or from a firm the profits of which have been charged to income-tax.					
(vi) Deduct amount of interest from tax-free securities of the Government of India or of a Local Government.					
(vii) Income now to be subjected to income-tax					
(viii) Rate applicable.....pies per rupee					
(ix) Amount of income-tax					

	Rs.	a.	Rs.	a.
(x) Deduction under section 17
(xi) Amount of deductions at source from salary or interest on securities for which credit is given under section 18 (5).				
(xii) Abatement on account of dividends (at.....pies per rupee).				
(xiii) Abatement on account of income from a registered firm (at.....pies per rupee).				
(xiv) Net amount of income-tax (or refund)		
(xv) Amount of super-tax		
(xvi) Penalty under section 28 or section 25 (2)		
(xvii) Total sum payable (or to be refunded—in figures as well as in words).				
Rupees.....				
Annas.....				

Dated

193 .

Income-tax Officer.

Classification of demand.

Serial No.	Classification	Amount of tax
1	Salaries—	Rs. a.
	(a) Paid by Government	...
	(b) „ a local authority	...
	„ companies, other bodies and associations	...
	(d) „ private employers	...
2	Interest on securities—	
	(a) on securities of the Government of India	...
	(b) „ „ Local Governments	...
	(c) on debentures and other securities of a local authority or company.	...
3	Income derived from property	...
4	„ „ business	...
5	Professional earnings	...
6	Income derived from other sources	...
	Total	...

Classification of demand (contd.)

Serial No.	Classification.	Amount of tax.
	Deduction on account of section 7 (i), 15 or 58 F	Rs. a.
	Deduction on account of section 17	
	Total of refunds and rebates as in the classification cage below ...	
	Penalty under section 25 (2)	
	" " 28	
	Net demand (or refund)	

** Classification of refunds and rebates.*

Source of income.	* Rate of refund or rebate.	Amount of refund or rebate	
		Rs.	a.

* Items (xii) and (xiii) on pre-page and abatement regarding securities.

Record of cash refunds.

Date of issue of notice of demand.				
	Number of voucher	...	...
	Date of voucher	...	...
	Amount of refund	...	...
	Reason for refund	...	...

† Return.

N—Not submitted

A—Submitted and accepted.

R—Submitted, but assessment not based
on it

† Accounts.

N—Not submitted.

A—Submitted and accepted.

R—Submitted but assessment not based
on them.

† Note.—For the purpose of compiling Annual Return No. VIII, I. T. Os. should invariably strike out the inapplicable entries.

Notice of demand.—The notice of demand referred to in section 29 and prescribed in rule 20 draws a clear distinction between the cases where an appeal lies against an assessment and where an appeal does not lie and shows the appropriate remedy to an aggrieved assessee in either case. These notices of demand should, so far as possible, contain the demand both on account of income-tax and super-tax, and since the total income has to be ascertained in every assessment for income-tax in order to determine the rate at which income-tax shall be payable on any income for which the assessee is responsible for direct payment, and as it is on the same total income that super-tax is leviable, it is desirable that, so far as possible, in the interests of economy and convenience to assesseees, the assessment both of income-tax and super-tax should be made simultaneously.¹

A notice can be validly issued under section 29 when Income-tax Officer has made an assessment.²

¹ I. T. Manual, para. 100, page 247.

² Behari Lal Chatterji v. Commissioner of Income-tax, U. P., 1934 A. L. J. 47.

No period is fixed for the issue of a notice of demand, therefore a notice issued, 14 months after the expiration of the year of assessment was held to be valid.¹ But it was remarked in the Patna case above referred to, that the notice must be issued within a reasonable time. A demand issued 28 months after the order of assessment, was held to be unreasonable and therefore illegal.²

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 26-A or to make a fresh assessment under section 27, or to any order against him under sub-section (2) of section 25 or section 25-A 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 register a firm under section 26-A, or of the date of the refusal to make a fresh assessment under

¹ Raia Rajendra Narain Bhanja Deo Kanika v. The Commissioner of Income-tax, Behar and Orissa, A. I. R. 1925 Pat. 581; 2 I. T. C. 82.

² Khemchand v. Commissioner of Income-tax, Bombay 1934 I.T.L.J. page 81; A. I. R. 1934 Sind 46.

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
P. 101. and shall be verified in the prescribed
R. 21. manner.

As to method of accounting see notes under section 13.
As to consequences of false return of income see notes under sections 22 and 28.

Appeals to Assistant Commissioner.—(i) The cases in which an appeal may lie to an Assistant Commissioner against the orders of an Income-tax Officer are specified in detail in section 30. As stated in paragraph 86, it is necessary that every effort should be made to get tax-payers to file returns of income and the restrictions on appeal contained in the proviso to section 30 (1), which definitely forbid the entertainment of any appeal against an assessment where the Income-tax Officer has been compelled to make the assessment under section 23 (4) (i.e., in cases where an assessee has failed to make a return or has failed to produce his accounts when called for or has failed to produce any proof of the accuracy of his returns), should be rigidly adhered to. Under no circumstances may any appeal be entertained in those cases.

Section 30 now allows appeals to the Assistant Commissioner against the refusal of an Income-tax Officer to re-open a case under section 27 and also against the order of an Income-tax Officer imposing a penalty under section 25 (2) or section 28.

Section 30 allows an appeal against an order of an Income-tax Officer refusing to register a firm under section 26-A. Any party, whether the firm itself or a partner, aggrieved by the Income-tax Officer's order can appeal to the Assistant Commissioner against it. The Commissioner can also exercise his powers of revision under section 33 and interfere with the Income-tax Officer's orders registering a firm or refusing registration.

Where the determination of the precise amount of loss sustained by an assessee in a particular year is material, for example, where the assessee is a firm and the amount of loss sustained by the firm affects the assessments of the partners, an appeal to the Assistant Commissioner should be admitted under section 30 against the Income-tax Officer's decision as to the amount of loss unless, of course, the case has been decided under section 23 (4). Similarly in cases of assessments under section 23 (1) or section 23 (3), where no demand is due because the income ascertained prior to giving an allowance on account of depreciation is less than the amount of this allowance, an appeal should be allowed against the Income-tax Officer's decision as to the amount of actual income against which the depreciation allowance is to be set off.

The form in which an appeal must be presented to the Assistant Commissioner is specified in rule 21 and that form must also be verified in the method prescribed in the same rule. Any false statement in the said verification is punishable under section 52.

An Assistant Commissioner should not hear appeals against his own orders passed as Income-tax Officer. When an Income-tax Officer on appointment as Assistant Commissioner, acting or permanent, is not transferred to another Assistant Commissioner's range, appeals against his orders as Income-tax Officer should be heard by another Assistant Commissioner appointed under section 5 (4) to hear such appeals.¹

Rule 21. An appeal under section 30 shall, in the case of an appeal against a refusal of an Income-tax Officer to make a fresh assessment under section 27, be in Form A ; in the case of an appeal against an order of an Income-tax Officer under section 25 (2) in Form C ; in the case of an appeal against an order of an Income-tax Officer under section 28 in Form D ; in the case of an appeal against a refusal of an Income-tax Officer to register a firm under section 26-A in Form D-1 and in other cases in Form B.

P. 101.

¹ I. T. Manual, para 101, pages 247-248.

FORM A.

*Form of appeal against an order refusing to reopen
an assessment under section 27.*

To

The Assistant Commissioner of

The day of 19

The petition of of post office,

District sheweth as follows :—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. for the year commencing the 1st day of April 19

2. Your petitioner was prevented by sufficient cause from making the return required by section 22 or did not receive the notice issued under sub-section (4) of section 22, or sub-section (2) of section 23, or had not a reasonable opportunity to comply or was prevented by sufficient cause from complying with the terms of the notice under sub-section (4) of section 22 or sub-section (2) of section 23, as more particularly specified in the statement attached.

3. Your petitioner therefore presented a petition to the Income-tax Officer under section 27, requesting him to cancel the assessment. This petition, the Income-tax Officer, by his order dated of which a copy is attached, has rejected.

4. Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to make a fresh assessment in accordance with the law.

Signed.

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed.

FORM B.

Form of appeal against assessment to Income-tax.

To

The Assistant Commissioner of

The _____ day of _____ 19 _____

The petition of _____ of _____ post office,

District sheweth as follows :—

1. Under the Indian Income-tax Act, 1922, your petitioner has been assessed on the sum of Rs. _____ for the year commencing the 1st day of April 19 _____. The notice of demand attached hereto was served upon him on _____.

2. Your petitioner's income accruing or arising or received or deemed under the provisions of the Act to accrue or arise or to be received in British India for the year ending the _____ day of 19 _____ amounted to Rs. _____.

3. Such income and profits actually accrued or arose or were received during the period of _____ months and _____ days.

4. During the said year your petitioner had no other income or profits.

5. Your petitioner has made a return of his income to the Income-tax Officer _____ under section 22, sub-section (2) of the Act and has complied with all the terms of the notice served on him by the Income-tax Officer under section 23 (2), and/or [Section 22 (4)].

Your petitioner therefore prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the Act).

Signed.

GROUND OF APPEAL.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

FORM C.

Form of appeal against an order under section 25 (2).

To

The Assistant Commissioner of Income-tax

The _____ day of _____ 19 .

The petition of _____ of _____ post office,

District, sheweth as follows :—

1. Under section 25 (2) of the Indian Income-tax Act, 1922, a penalty of Rs. _____ has been imposed on your petitioner. The notice of demand attached hereto was served upon him on

2. Your petitioner was prevented by sufficient cause as more particularly explained below from giving notice within the time prescribed by section 25 (2) to the Income-tax Officer of the discontinuance of his business, profession or vocation.

3. Your petitioner therefore requests that the order of the Income-tax Officer imposing a penalty of Rs. upon your petitioner may be set aside.

Signed.

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein and in the above statement of facts is true to the best of my information and belief.

Signed.

FORM D.

Form of appeal against an order under section 28.

To

The Commissioner of Income-tax/The Assistant Commissioner of Income-tax,

The _____ day of _____ 19 .

The petition of _____ of _____ post office,

District, sheweth as follows :—

1. Under section 28 of the Indian Income-tax Act, 1922, a penalty of Rs. _____ has been imposed on your petitioner by the Income-tax Officer/Assistant Commissioner. The notice of demand attached hereto was served upon him on _____

2. Your petitioner did not conceal the particulars of his income or deliberately furnish inaccurate particulars thereof but, as will be seen from the statement of facts attached, returned it at its real amount to the best of his knowledge and belief.

3. Your petitioner therefore requests that the order of the Income-tax Officer/Assistant Commissioner imposing a penalty of Rs. _____ upon your petitioner may be set aside.

Signed.

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

FORM D-1.

Form of appeal against an order refusing to register a firm under section 26-A.

To

The Assistant Commissioner of

The _____ day of _____ 19 .

The petition of _____ of _____ post office,

District, sheweth as follows :—

Under section 26-A of the Indian Income-tax Act, 1922, your petitioner applied to the _____ Income-tax Officer.....for the registration of the firm.....

By his order dated the _____ a copy of which is herewith attached, the Income-tax Officer has refused to register the said firm.

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and that he may be directed to register the firm.

Signed.

GROUND^S OF APPEAL.

Form of verification.

I, _____, the petitioner, named in the above petition do hereby declare that what is stated therein is true to the best of my information and belief.

Signed.

21-A. An appeal under section 50-A shall be in the following form :—

Form of appeal against an order refusing to grant a refund under section 48, 48-A or 49.

To

The Assistant Commissioner of
The _____ day of _____ 19 _____.

The petition of _____ of _____ post office,
District, sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under section 48/48-A/49 of the Indian Income-tax Act, 1922, of Rs. _____. The Income-tax Officer has by his order dated the _____ of which a copy is attached rejected the application granted a refund of only Rs. _____.

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund asked for may be granted.

Signed

GROUND OF APPEAL.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

Application.—Section 30 follows an appeal to the Assistant Commissioner in the following cases:

(1) Objection to the amount of assessment, under section 23.

(2) Objection to the rate at which an assessee is assessed, under section 23.

(3) Denial of liability to be assessed under the Income-tax Act.

(4) Refusal to register a firm.

(5) Refusal to make a fresh assessment under section 27.

(6) Any order against an assessee under section 25.

(7) An order under section 25-A.

(8) An order under section 28.

The section is wide enough to cover the case of a person who denies his liability to be assessed as an agent under section 43 of the Act.¹

¹ Gokul Das Chunni Lal v. Commissioner of Income-tax, 7 I.T.L.J. page 278.

History.—The words “to register a firm.....26-A ” were inserted by Indian Income-tax Act XVIII of 1933, and the words “or section 25-A ” by the Income-tax Act XXI of 1930.

Limitation.—The period of limitation is fixed ordinarily at 30 days within which an appeal must be presented to the Assistant Commissioner. The date of the receipt of notice of demand is the date for calculating the period of limitation.¹ The word “ordinarily ” means that the Assistant Commissioner is empowered to admit an appeal even after the expiry of 30 days prescribed by this section.²

It was held in the case of Firm Mohan Lal Hardeo Das³ that on the general principles and in view of section 29 of Limitation Act, an assessee is entitled to deduct the time spent in obtaining a copy of the order with which he is dissatisfied. This case was decided on 19th July 1929. By Act XXII of 1930, section 67-A was added, which expressly provides for the exclusion of the time requisite for obtaining a copy of the order against which an appeal is preferred or an application is made under section 66.

But in order that the time requisite for obtaining a copy be excluded, it is necessary that there must be a proper application for a copy. A pleader duly authorized to conduct an appeal before the Assistant Commissioner of Income-tax, but not expressly authorized in writing to obtain a copy of the order cannot validly present an application for a copy of the

¹ Firm Mohan Lal Hardeo Das v. Commissioner of Income-tax, Behar and Orissa, 4 I. T. C. 90 P.

² Mitchel and others v. McNeil & Co., A. I. R. 1927 Cal. 518 ; 130 I. C. 120.

³ 14 I. T. C. 90 ; A. I. R. 1930 Pat 13.

order. Where therefore an application for a copy was made by such a pleader and the application was insufficiently stamped also, it was held that no deduction could be made in respect of the invalid application for a copy before the defects were cured.¹

The Assistant Commissioner of Income-tax is entitled to reject *in limine* an unsigned and unverified petition and there is no provision in the Income-tax Act requiring the Assistant Commissioner to call upon the appellant to rectify the mistakes in appeal.²

Order rejecting an application under section 27.—The proviso to section 30 is no bar to an appeal against an order rejecting an application under section 27, such an order not being an assessment under section 23 (4) read with section 27 within the meaning of the proviso.³ The question in appeal against an order under section 27 refusing to reopen an assessment under section 23 (4) is not whether the assessment under that section is valid or not, but whether the assessee had shown sufficient cause for reopening of the assessment.⁴ The assessment under section 23 (4) and the dismissal of an application under section 27 for fresh assessment, is not an assessment made under section 23 (4) read with section 27 which would prevent the filing of an appeal under the proviso to section 30.⁵

¹ *Basant Lal Ramji Das v. Commissioner of Income-tax, Behar and Orissa*, 5 I. T. C. 383.

² *Damodar Prasad and others v. Commissioner of Income-tax, Behar and Orissa*, 3 I. T. C. 405; A. I. R. 1929 Pat. 409.

³ *A. K. A. C. C. V. V. Chettyar v. The Commissioner of Income-tax, Burma*, 3 I. T. C. 253.

⁴ *In re Abdul Bari*, 5 I. T. C. 358.

⁵ A. I. R. 1929 Rang. 526; A. I. R. 1933 Oudh 407.

Interim orders—Appeal against.—An interim order can be challenged in the appeal preferred against the final assessment, even where appeal is separately provided, unless a separate appeal, or application for review where no appeal lies, has been separately filed and disposed of.¹ But section 30 of the Act allows a right of appeal only when there is an assessment to tax. When there is no assessment to tax, no appeal lies.²

Assistant Commissioner has no general powers of review etc.—In an appeal against an order under section 27 of the Act refusing to reopen an assessment, it is not open to the Assistant Commissioner to enter into the merits of the assessment made under section 23 (4).³ Nor can the Assistant Commissioner enhance the penalty while hearing an appeal against an order imposing a penalty under section 28.⁴

Court fees.—A court fee stamp of eight annas must be affixed to every appeal to Assistant Commissioner.

Assessment under section 23 (4) and appeal.—No appeal lies against an assessment under section 23 (4). Every matter that has to be decided before the assessment, under section 23 (4) is arrived at is rendered not appealable. The only remedy of the assessee under such case to proceed under section 27.⁵ An assessee who fails to produce his accounts,

¹ *Bulchand Keshav Das v. Commissioner of Income-tax, Bombay*, A. I. R. 1930 Sind 301.

² *Shiam Lal and others v. Commissioner of Income-tax, U. P.*, 5 I. T. C. 474.

³ *Jhura Misra v. The Commissioner of Income-tax, U. P.*, 3 I. T. C. 248.

⁴ *In re Hari Kishna Das*, 132 I. C. 429; 5 I. T. C. 277.

⁵ *Commissioner of Income-tax v. M. S. K. Chettiar Firm*, A. I. R. 1931 Rang. 53.

and asks the Income-tax Officer to assess him on the materials before him, is obviously liable to be assessed under section 23 (4). The report of a case in *Pitta Ramaswami v. The Commissioner of Income-tax, Madras*,¹ gives a head note in which it is said that "where an assessee called upon by the I. T. O. to produce his accounts to substantiate his return of income did not do so and said that the Officer could assess him on the materials he could find", it was held that the assessment fell within the terms of section 23 (3) and not within section 23 (4) and consequently an appeal lay under section 30 of the Income-tax Act. The report itself is not quite clear, but it appears that the assessee was the petitioner, and the petition was dismissed with costs to the opposite party, who was the Commissioner of Income-tax. This clearly shows that there is some mistake in the report and the head note is clearly wrong. The facts as stated make it clear case for the application of section 23 (4) and for the passing of a non-appealable order. The proviso has been enacted to penalise a person who does not comply with the requisition of the Income-tax Officer by depriving him of his right of appeal. It has been held that the proviso deprives the assessee of right of appeal in every case of assessment under section 23 (4), even though the assessment may be *ultra vires*. The law does not make a distinction between an assessment which is *ultra vires* and one passed within jurisdiction, but wrong in merits, in cases falling within section 23 (4). Once the appeal is barred, the assessee cannot get the benefit of any ground whatever.²

¹ 2 I. T. C. 196.

² *Duni Chand v. Commissioner of Income-tax, Punjab*, 4 I. T. C. 33; A. I. R. 1929 Lahore 593; A. I. R. 1928 Lahore 864; A. I. R. 1931 Rang. 53 F. B.; A. L. R. 1932 page 1 F. B.

But an order does not become one under section 23 (4) simply because the Income-tax Officer chooses to describe it as one under that sub-section. The question whether the Income-tax Officer has legally acted under section 23 (4) is a question of law¹ and the appellate authority should in every case satisfy itself that the order ostensibly passed under section 23 (4) is in reality and in law one that is covered by the words of that sub-section. The Assistant Commissioner must state the facts and give reasons for his findings.² It is only when the Assistant Commissioner is satisfied that the assessment under section 23 (4) was not made only ostensibly, but genuinely, that the appeal is barred.³

It has been held that an appeal is barred by section 23 (4) only when the assessee challenges his liability to be assessed. The words "no appeal shall lie in respect of an assessment" etc., do not mean that no appeal shall lie in respect of any and every matter although it is not dependent upon the assessment having been made under section 23 (4). Where the assessee does not challenge the assessment, but only his liability to be taxed in a different capacity, than that possessed by him the proviso does not take away the right of appeal. The proviso being a disabling proviso must be strictly construed.

It is a well settled rule of construction that the Court will not hold that a penalty has been incurred unless the language of the clause which is said to impose it is so clear that the case must necessarily be within it. Another equally well settled rule of construction is that where a

¹ A. I. R. 1927 L. 288.

² A. I. R. 1930 Lahore 277.

³ A. I. R. 1929 Lahore 593 F. B.

proviso to a section is open to a double construction, one which inflicts a penalty and the other which does not, the latter construction should prevail. Accordingly, the proviso to section 30 (1) does not have the effect of taking away a right of appeal in cases where the assessee does not challenge the assessment levied on him under section 23, clause (4), but only challenges his liability to be taxed in a different capacity than that possessed by him, and more so when such capacity has been duly recognised by the Income-tax Officer. Even if the proviso be open to a double construction, the proviso should be so interpreted as to exclude an appeal only in respect of an assessment levied under section 23 (4) and not an appeal by a registered firm from an assessment of super-tax (P. 87, C. 2).¹

Super-tax.—Section 53 makes the provisions of section 30 applicable to the levy of super-tax and the words “denying his liability to be assessed under the Act” in section 30 are wide enough to include within their ambit the denial of liability to be assessed to super-tax.²

Practice.—Where the Income-tax Officer is asked by the Assistant Commissioner simply to report his basis of assessment, the Income-tax Officer is not bound to receive evidence produced by the assessee. The enquiry having been made at appellate stage under the direction of the Assistant Commissioner, there is nothing to require the Income-tax Officer to take evidence produced by the assessee.

But where in an appeal the Assistant Commissioner calls from the Income-tax Officer, the basis of his assessment,

¹ Firm Khaimchand Ram Das v. Commissioner of Income-tax, Bombay, 1934 I. T. L. J. page 81 at 82; A. I. R. 1934 Sind 46.

² 1934 I. T. L. J. page 81 at 82 above.

and the Income-tax Officer furnishes the report, the assessee should be given an opportunity by the Assistant Commissioner to rebut the allegations of fact made in the report.¹

The Income-tax authorities should not allow the applicant to attack the assessment for 2 years in one appeal.²

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

Hearing of Appeal.
P. 102, 103.

(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 26 A, or to make a fresh assessment under section 27,

¹ Abdul Razak, 1935 I. T. L. J. page 330.

² A. I. R. 1930 Lahore 1014.

- (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 cases of an order under sub-section (2) of section 2 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.

Powers of Assistant Commissioner in dealing with appeals.

—The provisions of this section have been re-worded in order to make it clear that the Assistant Commissioner in entertaining an appeal has power to remand a case to the Income-tax Officer for report or disposal on its merits and also that the Assistant Commissioner is not required to pass orders on the actual date of hearing, but may pass orders after the last day of hearing.

When a document purporting to be an appeal under section 30 is filed against an assessment purporting to have been made under sub-section (4) of section 23 it should be admitted as an appeal in Bihar and Orissa (see *Kunwarji Ananda*, 5 I. T. C. 417); elsewhere, it should be treated as an application for the admission of the appeal. In neither case should the Assistant Commissioner make an *ex parte* order declining to entertain the appeal on the ground that by reason of the proviso to sub-section (1) of section 30 no appeal lies. The assessee should be given a hearing on the preliminary issue whether the appeal lies, and a finding should be recorded on that issue. (The notice giving the assessee an opportunity of a hearing should not be issued in Form I. T.—18, except in Bihar and Orissa.) The decision on this preliminary issue will depend on whether the assessment expressed to have been made under sub-section (4) of section 23 was in fact capable of being made under that sub-section. If the decision on this issue is adverse to the appellant, the appeal will be

dismissed (in Bihar and Orissa) or its admission refused (elsewhere) on the ground that no appeal lies.

An Assistant Commissioner in dealing with an appeal may enhance the assessment made by the Income-tax Officer, but under the proviso to sub-section (3) he must first give the appellant a reasonable opportunity of showing cause against the enhancement. The appellant in such a case may, under section 32, appeal to the Commissioner against the order of enhancement.

Appeals should never be simply dismissed for default of appearance—they should always be decided on their merits, and a reasonable decision written, whether the appellant appears or not. If the notice of hearing has not been served on the appellant in time to permit of his appearing in person or by pleader at the time and place fixed for the hearing of the appeal, the appeal should not be disposed of, but should be adjourned and a fresh notice issued to the appellant.

In dealing with an appeal against an assessment under section 34 the Assistant Commissioner can deal only with that part of the income that has escaped assessment at the original assessment or with any enhancement of rate at the re-assessment. He must not therefore entertain any plea that involves any reduction of the amount determined at the original assessment as the amount of the assessee's income from any source that did not escape assessment at the original assessment.¹

Appeals to Commissioner.—No second appeal lies from orders passed by an Income-tax Officer. One appeal is allowed to the Assistant Commissioner under section 30. The only cases in which an appeal may be made to the Commissioner are against special orders passed by an Assistant Commissioner himself, *viz.*, an order imposing a penalty under section 28 or an order enhancing an assessment in the course of an appeal. No appeal lies to the Commissioner in any other case.²

Section 31 (2) gives power to the Assistant Commissioner of hearing an appeal to order further inquiry, but this is in case where he sets aside the assessment and directs

¹ I. T. Manual, para. 102, pages 248-49.

² I. T. Manual, para. 103, page 249.

the Income-tax Officer to make a fresh assessment. The assessment should not be set aside on the ground that new evidence if heard and accepted would prove that the assessment was defective.¹

The Assistant Commissioner can estimate the income of the assessee in case he is not satisfied with the material before him, but it does not follow that he can act under section 23 (4). The Assistant Commissioner while making an estimate of income, should give such reasons as to enable the Commissioner to see whether the order is proper and not arbitrary.²

The Assistant Commissioner, like the Income-tax Officer, is not bound by the strict provisions of the Indian Evidence Act.³

It has been held that the Assistant Commissioner has no power to travel beyond the subject matter of the assessment and is not entitled to assess new sources of income.⁴

"Section 30 exists for the assessee's benefit, unless the statute expressly gives authority to the Assistant Commissioner, he cannot be said to possess the same jurisdiction as the original court. The right of appeal cannot be taken away by an act of the Assistant Commissioner. Proceedings could have been taken under section 34 without impairing the right of appeal, but the Assistant Commissioner cannot usurp the powers of an original court under section 31."

¹ A. I. R. 1934 All., 217.

² A. I. R. 1930 Rang. 4.

³ See notes under section 23 *supra*.

⁴ The Commissioner of Income-tax v. E. M. Chettiar, 7 R. 636.

Fresh evidence.—It has been held by the Rangoon Chief Court that the right of an assessee to produce fresh evidence in appeal in an income-tax case is similar to the right of an appellant to produce evidence in appeal under Order 41, Rule 27 of C. P. C.¹ But the High Court of Allahabad has held that no analogy can be drawn from Order 41, Rule 27, C. P. C., to determine the powers of the Assistant Commissioner hearing an appeal under the Income-tax Act section 31 (2) as the latter gives unrestricted discretion to the Assistant Commissioner to make further enquiry, that is to obtain more evidence throwing light on the question which he is called upon to decide, while Order 41, Rule 27, confers very limited powers upon a court of appeal in the matter of admitting fresh evidence.²

Fresh points in appeal.—It is improper to allow an assessee to raise fresh points for the first time in appeal. An assessee was not allowed to raise the plea, that a partition of a joint family had taken place in appeal when the point was not raised before the Income-tax Officer.³ In another case, the Lahore High Court, while discussing the right of an appellant to raise fresh points for the first time in appeal remarked as follows:—

"The objection which the petitioner made in his appeal to the Assistant Commissioner ought to have been taken by him before the Income-tax Officer under section 25-A of the Income-tax Act. Had such objection been

¹ *E. M. Chettyar Firm v. Commissioner of Income-tax, Burma*, 4 I. T. C. 111; A. I. R. 1930 Rang. 4.

² *Biradhmai Lodha v. Income-tax Commissioner, U. P.*, 1934 I. T. L. J. page 63; 1934 A. L. J. page 1213.

³ *Biradhmai Lodha v. Commissioner of Income-tax, U. P.*, A. I. R. 1934 All. 217; 1934 I. T. L. J. 1213; 1934 I. T. L. J. 63.

taken, it would have been incumbent on the Income-tax Officer to make such enquiry as he thought fit and to pass an order under that section, if he found that the requirements of that section had been fulfilled. If the petitioner finds himself dissatisfied with the order passed by the Income-tax Officer he could prefer an appeal against that order under the provisions of section 30 (1) of the Act. What the petitioner claims to be entitled to do is to call upon the Assistant Commissioner in an appeal to him to go into a question which should have been raised before and decided by the I. T. O., on an appeal against the assessment. This appears to me to be opposed to the clear and unmistakable provisions of section 30 itself. I consider that the opinion of the Income-tax Commissioner is correct and that he has rightly held that the petitioner could not appeal to the Assistant Commissioner on the ground set out by him, in as much as no objection under section 25-A had been made, and that the Assistant Commissioner was right in refusing to go into the matter and further, in my opinion, the provisions of section 30 (1) barred the Assistant Commissioner in entertaining the plea".¹

Exparte hearing of an appeal.—There is no provision for *exparte* dismissal of an appeal. The Assistant Commissioner should in every case decide the appeal on the merits, after hearing the appellant, if he appears.²

Enhancement.—The proviso to section 31 simply contemplates a notice for the enhancement of assessment. No particular form of notice is prescribed, nor is it necessary to give any particular data or information in the notice.³ The word enhancement in sections 31 (3) and 32 (1) means enhancement of assessment as a whole. An increase under one head and decrease under another, where the total assessment is not increased, does not amount to enhancement.⁴

¹ Karam Chand v. Commissioner of Income-tax, Punjab, A. I. R. 1931 Lahore 601; 5 I. T. C. 315.

² *In re* Bhagabati Prasad, A. I. R. 1932 All. 390.

³ A. I. R. 1930 Rang. 4; 4 I. T. C. 111.

⁴ T. Namburumal Chetty & Sons v. The Commissioner of Income-tax, Madras, 6 I. T. L. J. 313; 56 Mad. 329 F. B.; 7 I. T. L. J. 247.

Orders under section 31.—It has been held by a Full Bench of Patna High Court that an order of the Assistant Commissioner rejecting an appeal against an assessment under section 23 (4) as not maintainable is an order within the meaning of section 31, the question of law arising thereon for reference under section 66 being whether the facts found, amount in law to a default by the assessee justifying the assessment under section 23 (4) and the application of the proviso to section 30 (1).¹ The same view has been held by the Sind Chief Court in *Firm Khem Chand Ram Das v. The Commissioner of Income-tax, Sind*.²

In another case, the Patna High Court held that only those questions which were raised in appeal should be decided in it, and these alone could be referred to High Court. The question sought to be referred though the real point in issue between the parties and certain to be raised in subsequent years, would not be said to arise out of the appellate order, and the High Court would refuse to answer the same.³ The question whether the points which could not be raised in appeal because no appeal was competent, be referred to the High Court came up before the Allahabad High Court and was decided in the negative. It was held that where no appeal lies, as in the case of an order under section 23 (4), when the Assistant Commissioner, after going into the case decides that section 23 (4) has been rightly applied, and rejects the appeal on

¹ *Kunwarji Ananda v. The Commissioner of Income-tax, Behar and Orissa*, 5 I. T. C. 417 F. B.; 11 Pat. 187 F.B.

² A. I. R. 1934 Sind 46.

³ *Maharaj Kumar Ram Rambijaya Prasad Singh v. The Commissioner of Income-tax, Behar & Orissa*, 7 I. T. C. 482.

the ground that no appeal lies, the order of the Assistant Commissioner is not one under section 31.¹

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.

Appeals against
orders of Assistant
Commissioner.

P. 103, 140.

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

R. 24.
P. 87.

(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.

Limitation.—The Commissioner does not seem to be empowered to enlarge the period of limitation. The word “ordinarily” which appears in section 31 is not to be found in section 32. For the method of computation of limitation see also notes under section 67-A. As to the meaning of the word enhancement, see notes under section 31 supra.

History.—The words “the date on.....order” were added by the Income-tax Amendment Act XVIII of 1933. See also notes under section 28.

Rule 22. An appeal under section 32 (2) shall, in the case of an appeal against an order of an Assistant Commissioner under section 28, be in Form D attached to Rule 21 and in other cases in Form E.

P. 103.

¹ A. L. R. 1932 All. 674.

FORM E.

To

The Commissioner of Income-tax,
The day of 19

The petition of sheweth as follows :—

1. Under section 31 (3) of the Indian Income-tax Act, 1922, the Assistant Commissioner of has increased the tax payable by your petitioner from Rs. to Rs. .

2. Your petitioner prays that the enhancement may be set aside or reduced to Rs. for the reasons stated below.

Signed.

GROUNDS OF APPEAL.
Form of verification.

I, , the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

FORM D.

Form of appeal against an order under section 28.

To

The Commissioner of Income-tax/The Assistant Commissioner of Income-tax,

The day of 19 .

The petition of of post office,
District, sheweth as follows :—

1. Under section 28 of the Indian Income-tax Act, 1922, a penalty of Rs. has been imposed on your

petitioner by the Income-tax Officer/Assistant Commissioner. The notice of demand attached hereto was served upon him on

2. Your petitioner did not conceal the particulars of his income or deliberately furnish inaccurate particulars thereof but, as will be seen from the statement of facts attached, returned it at its real amount to the best of his knowledge and belief.

3. Your petitioner therefore requests that the order of the Income-tax Officer/Assistant Commissioner imposing a penalty of Rs. _____ upon your petitioner may be set aside.

Signed.

STATEMENT OF FACTS.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

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 power of an Assistant Commissioner under sub-section (4) of section 5.

P. 104.

Power of review.

(2) On receipt of the record the Commissioner may make such enquiry or cause such enquiry 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.

Commissioner's power of revision.—The period within which an Income-tax Officer may assess income that has escaped assessment is restricted by section 34 and the time within which an Income-tax Officer, Assistant Commissioner or Commissioner of Income-tax may correct a mistake apparent on the face of the record by section 35. The Commissioner acting under section 33 cannot extend this period of limitation though he can revise, after it has expired, action validly taken within it. If a Commissioner of Income-tax desires to exercise his power of revision in any case where more than a year has elapsed since the passing of the last order by the subordinate authority he should not do so without first consulting the Central Board of Revenue.

Where in consequence of any appellate or revisional order, or any decision of a High Court on a reference, the assessment of a firm is modified in a manner entitling any partner to a reduction of the tax imposed on him individually, and for any reason such relief cannot be given by the Assistant Commissioner in the exercise of his appellate powers, the Commissioner of Income-tax should make the reduction under section 33 regardless of the period of one year mentioned above.

The Commissioner need not make a personal enquiry, if any enquiry is necessary, before exercising his powers of revision. He may cause an enquiry to be made by a subordinate officer.

The power conferred by this section on a Commissioner can only be exercised once in any particular case. A Commissioner who has once "declined to interfere" under this section is debarred from subsequent action under that section just as he would be if he had passed an order modifying the assessment.

An order under section 33 merely declining to interfere is not an order "prejudicial to the assessee." A Commissioner is therefore not bound to hear an assessee or his representative before rejecting a revision petition. The Act, of course, does not contemplate such petitions.

The decision of a Board of Referees under section 33-A is not subject to appeal to any Income-tax authority and cannot be revised by the Commissioner in exercise of his powers under section 33.¹

Scope.—The power under section 33 is wrongly called power of review. Really the power conferred by section 33 is that of revision or superintendence.²

The Commissioner is by this section empowered to review any order passed by any officer subordinate to him. He can even review orders passed by him as an Assistant Commissioner. But he has no power to review his orders under this section.³

Limit of the powers of the Commissioner.—The powers of the Commissioner under section 33 are merely of revision and as such are subject to the same restrictions as those of the I. T. O. under sections 34 and 35. Where no action could have been taken by the Income-tax Officer under sections 34 and 35 of the Act, the fact that the assessee in his application under section 66 (2) of the Act moved the Commissioner to take action under section 33 would not make any difference in the limitation on the Commissioner's powers to re-open and alter an assessment to the prejudice of the assessee.

Section 33 provides that the Commissioner may call for the record of any proceedings under the Act and after such enquiry as he may consider fit may pass such orders as he thinks fit, but subject to the provisions of the Act. New

¹ I. T. Manual, para. 104, p. 250.

² Abdul Kadir v. Commissioner of Income-tax, Madras, A. I. R. 1928 Mad. 257.

³ *In re Satchidananda Sarupa*, 88 I. C. 1014.

section 35 provides that the Income-tax Officer may at any time within one year from the date of any demand rectify any mistake apparent from the record of the assessment. This power includes the rectification of a mistake which has the effect of enhancing assessment. The words "Subject to the provisions of this Act" contained in section 33 leave no doubt in our minds that the Commissioner is not entitled to pass an order which he himself or another Income-tax authority is not authorised to pass under the other provisions of the Act. In the absence of an express provision enabling the Commissioner to pass orders prejudicial to an assessee without any limit of time, we are of opinion that his powers are subject to the same restrictions as those of an Income-tax Officer under section 35 which clearly provides that an Income-tax Officer is not entitled to rectify a mistake to the prejudice of an assessee after the expiry of one year from the date of the demand. Even if the case be governed by section 34 which enables an Income-tax Officer to reassess income, profits or gains when they have escaped assessment or have been assessed at too low a rate, the same remarks would apply *mutatis mutandis*, as under that section also the powers must be exercised within one year.¹ Similarly, it has been held that "under section 34 of the Income-tax Act, it is the Income-tax Officer alone that can initiate reassessment proceedings and the Commissioner has no right of initiating or independently starting reassessment proceedings. The condition precedent for reassessment is service of notice indicated under section 34 and consequently where such

¹ R. S. Lala Jesa Ram v. Commissioner of Income-tax, Punjab, 2 I. T. C. 342 at 344; Ganesh Das v. Commissioner of Income-tax, Punjab, 2 I. T. C. 316.

service of notice has not been affected, the Commissioner in exercise of the powers under section 33 has no right to initiate further or fresh proceedings for reassessment. For the purpose of initiating reassessment proceedings, section 33 of the Act is subject to the provisions of section 34.¹ Likewise an order of the Commissioner directing the cancellation of the registration of a firm made by the Income-tax Officer more than one year after it was made is illegal.²

But there is no bar to the exercise by the Commissioner of his powers under section 33, only because an application under section 66 (2) is pending.³ The powers under this section are intended to be corrective of the mistakes that may be made by subordinate taxing authorities, and the Commissioner can interfere where the discretion of the Income-tax Officer has been improperly exercised, so that there should be no improper or arbitrary exercise of powers conferred by that section.⁴ For the purpose of acting under section 33, the Commissioner can *suo motu* call for the record of any proceedings taken before any authority subordinate to him.⁵

Reasonable opportunity.—Where an order is passed by the Commissioner of Income-tax, under section 33 of the Income-tax Act, in circumstances where he is really exercising the duties of the Income-tax Officer under section 23 (2)

¹ Messrs. Sheikh Abdul Qadir Marcayar & Co. v. Commissioner of Income-tax, Madras, 2 I. T. C. 372; A. I. R. 1928 Mad. 257; A. I. R. 1927 Lahore 248.

² *In re Firm Khem Chand Ram Das*, A. I. R. 1934 Sind 46.

³ A. I. R. 1929 Rang. 245.

⁴ A. I. R. 1930 Rang. 33.

⁵ Messrs. Mohammad Farid Mohammad Shafi v. Commissioner of Income-tax, Punjab, A. I. R. 1927 Lahore 513, 2 I. T. C. 430.

of the Act, calling upon the assessee to give evidence to support the original return made by him, reasonable time ought to be given to the assessee to place his case before the Commissioner before any order is finally passed. In the circumstances of the present case, a week's time was held not sufficient time or a "reasonable opportunity of being heard" within the meaning of section 33, proviso (2) of the Act.¹

Res judicata.—The doctrine of *res judicata* has no application to Income-tax proceedings.² But the income-tax authorities must proceed in a judicial spirit and where a matter had been once agitated and finally decided, it should not be reheard.

On an assessment having been made by the Commissioner acting under section 33, the assessee applied under section 66 (1) to have certain points of law, alleged to have arisen, referred to the High Court. On the Commissioner declining to take action, an application was made to the High Court which was rejected by a Division Bench, on the ground that the Lahore High Court had no such powers as the Presidency High Courts had of compelling a reference under section 66 (1). Thereafter, a notice of demand was issued, wrongly mentioning section 29 therein, taking advantage of which the assessee having paid the amount of tax, again applied to the Commissioner to refer the points already agitated along with the point of wrong use of section 28, to the High Court, but this was disallowed.³

¹ Sachchidanand Sinha v. Commissioner of Income-tax, Behar and Orissa, 1 I. T. C. 381; A. I. R. 1924 Patna 608.

² *In re* Harmuk Roy Dulichand, 56 Cal. 39 and Sanker Linga and another, A. I. R. 1930 Mad. 209.

³ Mohammad Farid Mohammad Shafi v. Commissioner of Income-tax, Punjab, 3 I. T. C. 67; A. I. R. 1928 Lahore 701.

Court fee.—No court fee is prescribed for an application under section 33.

Limitation.—No specific period of limitation is prescribed for an application under section 33, and it was even held in a case that there is nothing in section 33, which prohibits the Commissioner from enhancing a more than one year old assessment made by his subordinates.¹ But as has been shown above, the words "subject to the provisions of this Act" in section 33 (2) make it clear that the powers of the Commissioner under this section are subject to the restrictions and limitations imposed by other sections of the Act, viz. sections 34, 35 and the Commissioner cannot, while acting under this section, override other provisions of the Income-tax Act and pass orders which would be barred by the provisions of any other section (See notes supra)

Power of Review and Reference to High Court.—Prior to the passing of Income-tax Amendment Act XVIII of 1933, it was held that by some High Courts that there was no obligation upon the Commissioner to state a case on a point arising on an order passed under section 33 and the High Court had no power to compel him to do so.² There was a conflict of decisions between the various High Courts. But the controversy has been set at rest by Act XVIII of 1933 which entitles the assessee to require the Commissioner to refer to the High Court any question of law arising out of an order under section 33.

33-A. (1) Any person aggrieved by an order of an
Reference to Board of Referees. Income-tax Officer under sub-section (1) or sub-section (2) of section 23-A may, within

¹ A. I. R. 1928 Mad. 257.

² A. I. R. 1934 Bom. 62.

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.

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(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 :

P. 104-A.

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

P. 104.

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.

History.—This section was added by the Income-tax Amendment Act XXI of 1930.

Reference to Board of Referees.—No time is prescribed in sub-section 3 of section 33-A within which the Commissioner should refer an appeal to a Board of Referees. But every effort should be made to avoid delay in making these references. So far as possible the reference should be made within 60 days at most of the receipt of the appeal.¹

Rules under Section 33-A.

Notification No. 35, dated the 12th July, 1930.

RULES.

1. The Commissioner of Income-tax on receipt of an appeal under section 33-A of the Indian Income-tax Act, 1922, shall, unless in pursuance of the proviso to sub-section (3) of that section, the appeal is withdrawn, appoint a Board of Referees consisting of not less than three and not more than five members chosen by him, subject to the provisions of sub-section (6) of that section, from a panel constituted and maintained by the Central Board of Revenue.

¹ I. T. Manual, para 104-A.

2. Appointments to, and resignations or removals from, the panel shall be published in the Gazette of India.

3. The names of the members chosen by the Commissioner shall be communicated to the appellant within one week of receipt of the appeal in the Commissioner's office or of the decision of the Commissioner under section 33, as the case may be.

4. Within a period of 15 days from the receipt of the communication, the appellant may object, without giving any reasons, to the inclusion of any name or names in the Board, and submit the names of not less than 5 members of the panel to whom he will not object.

5. In the event of any objection to any name, the Commissioner shall substitute a fresh name therefor, but shall not be bound to accept a name submitted by the appellant, and shall communicate it forthwith to the appellant.

6. The appellant may not subsequently object to the inclusion in the Board of any name submitted by himself.

7. The appellant shall be allowed one further period of 15 days in which to object to names not originally included by the Commissioner nor submitted by himself.

8. If the applicant has twice objected to the constitution of the Board proposed by the Commissioner, the Central Board of Revenue shall settle the composition of the Board and the decision of the Central Board of Revenue shall be final.

9. The time and place of the first meeting of the Board shall be fixed by the Commissioner after consulting the members. The time and place of subsequent meetings shall be fixed by the Board and announced to the appellant and the Commissioner.

10. The members of the Board shall elect their own chairman.

11. The decision of the Board shall be the decision of the majority of members present. All the members present shall sign the report, and any member who differs from the others may record a dissenting minute. Should there be an equality of votes, the chairman shall have a casting vote. No decision of the Board which is signed by less than half the members shall be valid. The proceedings of the Board shall not be

invalidated merely by reason of the absence of a member or his failure to sign the report of the Board.

Prescribed for.—By Rule 22-A Form F is prescribed for appeal against an order under section 23-A and Form G for appeals against an order under section 23-A (2).

FORM F.

To

The Commissioner of Income-tax,

The day of 19 .

The petition of sheweth as follows :—

1. The Income-tax Officer of , with the previous approval of the Assistant Commissioner of has passed an order dated of which a copy is attached under sub-section (1) of section 23-A of the Indian Income-tax Act, 1922, that the sum payable as income-tax by the firm/association known as

shall not be determined and that the share of your petitioner in the profits and gains of the said firm/association shall be included in his total income for the purpose of assessment ; and a notice of the said order has been served upon your petitioner on the day of

2. Your petitioner, being aggrieved, for the reasons stated below, by the order of the Income-tax Officer, prays that the said order may be set aside.

Signed.

GROUNDS OF APPEAL.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

FORM G.

To

The Commissioner of Income-tax,

The _____ day of _____ 19 .

The petition of _____ sheweth as follows :—

1. The Income-tax Officer of _____, with the previous approval of the Assistant Commissioner of _____ has passed an order dated _____ of which a copy is attached under sub-section (2) of section 23-A of the Indian Income-tax Act, 1922, that the sum payable as income-tax by the company known as the _____ shall not be determined and that the proportionate share of your petitioner in the profits and gains of the said company shall be included in his total income for the purpose of assessment ; and a notice of the said order has been served upon your petitioner on the _____ day of _____

2. Your petitioner, being aggrieved, for the reasons set out below, by the order of the Income-tax Officer, prays that the said order may be set aside.

Signed.

GROUNDS OF APPEAL.

Form of verification.

I, _____, the petitioner, named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed _____

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 tax 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 reassess 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.

For consequences of making a false return see notes under section 28 supra.

Assessment of income which has escaped assessment in previous years.—Under the provisions of section 34 where income chargeable to income-tax has escaped assessment in any financial year or has been assessed at too low a rate, the Income-tax Officer may commence proceedings at any time within one period of twelve months reckoned

according to the Gregorian Calendar from the end of the financial year in which the income so escaped assessment in order to get a full or proper assessment. All that section 34 requires the Income-tax Officer to do within the statutory period of one year is to commence proceedings for assessment. It is not necessary that the proceedings should be completed within that period.

A notice under section 34 need not specify the detailed grounds on which it is proposed to re-open the assessment.

The following form has been prescribed for the notice under section 34 :—

Notice under section 34 of the Indian Income-tax Act

(XI.22.)

Income-tax Office.

Dated

To

Whereas I have reason to believe that your income from.....
(enter source) chargeable to income-tax in the year ending the 31st
March, 19 ,

(a) has wholly/partially escaped assessment,

(b) has been assessed at too low rate, that is to say, atpies
in the rupee instead of at.....pies in the rupee, and I
therefore propose—

(a) to assess the said income that has escaped assessment,

(b) to re-assess your said income at the correct rate as aforesaid.

I hereupon require you to deliver to me not later than or
within 30 days of the receipt of this notice, a return in the attached form
of your income from all sources chargeable to income-tax during the said
year ending

Seal

Income-tax Officer.

If it appears at any stage of the proceedings that no income has escaped assessment or been assessed at too low a rate, the Income-tax Officer must promptly stop the proceedings. It is not intended that when a man has concealed part of his income and the Income-tax Officer is proceeding to assess the income that has escaped taxation, the assessee should be entitled to have an assessment that has already become final re-opened. Still less is it intended that the Income-tax Officer should be invested with wide powers of revision or review merely because he has formed a mistaken impression that certain income has escaped assessment or been assessed at too low a rate. His powers under section 34 can never be used, therefore, to effect a reduction of tax already levied.

When income that escaped assessment or was assessed at too low a rate is subsequently assessed or fully assessed, the proviso to section 34 makes it clear that the rate applicable to such assessment or re-assessment is the rate in force at the time when the income should originally have been so assessed.

As regards appeal against an assessment under section 34 please see last sub-paragraph of paragraph 102 (vide notes under section 31 supra).¹

In any year.—The expression “in any year” must be read as meaning the year during which proceedings in assessment in respect of that very year should have been initiated.²

Escaped assessment.—The term “escaped assessment” used in section 34 is not equivalent to the term “has not been assessed.” The word “assessment” is not limited to the definite act of making an order of assessment.³ The word “escape” connotes failure by the taxing authority, to tax the income due to accidental or deliberate omission of

¹ I. T. Manual, para. 105, pages 251-252.

² A. I. R. 1934 Cal. 515, *Naval Kishore Kharati Lal v. Commissioner of Income-tax, Punjab*, 1934 I. T. L. J. page 203.

³ *Sir Rajendra Nath Mukerji v. Commissioner of Income-tax, Bengal*, 1934 I. T. C. 17 P. C. ; A. I. R. 1934 P. C. 300.

the assessee to declare it, or to some similar circumstances,¹ or due to a wrong allowance or improper deduction or imposition of a low rate.² It covers the case of deliberate adoption of wrong opinion by the Income-tax Officer.³ It would appear that the view expressed in *Kishen Kishore v. Commissioner of Income-tax, Lahore*,⁴ that the word escape implies failure by the taxing authority to tax by accidental or deliberate omission by the assessee to declare the income or to some similar circumstance and not to a deliberate finding by the Income-tax Officer in which he discovers a mistake resulting in the income escaping assessment or being assessed at too low a rate is not sound.⁵

To interpret the words "has escaped assessment" as "has not been assessed" is to place too narrow an interpretation on the word "assessment" and too wide an interpretation on the word "escaped." The word assessment is not confined in the Income-tax Act to the definite act of making an assessment.

The words "for any reason" in the beginning of the section widen the interpretation and not narrow it. Accordingly, if an item of income is included in the return submitted by an assessee during a tax year but is left unassessed by the I. T. O. or if assessed in the first instance, the assessment

¹ A. I. R. 1933 Lahore 25.

² *Gopal Vajjnath Maudhai v. Commissioner of Income-tax, Bombay*, 1935 I. T. L. J. 382.

³ *K. C. Gopepati Narayan Deo*, 49 Mad. 22. *In re Messrs. Anglo-Persian Oil Co. Ltd.*, A. I. R. 1933 Cal. 777 ; 7 I. T. L. J. 169.

⁴ A. I. R. 1933 Lahore 284.

⁵ *Amir Singh Sher Singh v. Commissioner of Income-tax, Punjab*, 1935 I. T. L. J. page 212.

is cancelled by any appellate or revisional authority, it escapes assessment within the meaning of section 34 and the assessee can be legally served with a notice within one year of the end of that year.¹

Towards the end of the year 1926-27 the partners of a registered firm of Martin & Co. purchased the business and assets of Burn & Co. The purchase was effected not by or on behalf of the firm of Martin & Co., but by the partners of that firm as individuals who contributed funds for the purpose proportionally to their shares in Martin & Co., with the same share therein as they held in Martin & Co. In the year 1927-28 Martin & Co. was a registered firm while Burn & Co. was unregistered. In compliance to two separate notices to Martin & Co. and Burn & Co., they made separate returns of their incomes on 24th September, 1927, and on 13th January, 1928, respectively. On 25th February 1928, however, the income-tax officer made an assessment on Martin & Co., in respect of the combined incomes returned by Martin & Co., and Burn & Co., on the footing that the business of Burn & Co. had become a branch of the business of Martin & Co., Martin & Co. appealed against the assessment and the High Court, on the 16th May, 1930, held that the income of a registered firm cannot for the purposes of the Act be aggregated with the income of an unregistered firm, but that the income of each must be separately assessed, irrespective of the fact that the persons interested in the profits of both concerns are the same. In consequence of this decision the assessment which had been made on Martin & Co., was amended by the elimination therefrom of the income returned by Burn & Co., and on the

¹ Madan Mohan Lal v. Commissioner of Income-tax, Punjab, 1935 I. T. L. J. page 334.

8th November, 1930, an assessment was made on Burn & Co., on their income as returned by them on 13th January, 1928.

Held that the amendment of Martin & Co.'s assessment by the elimination of Burn & Co.'s profits with a view to the separate assessment of the latter cannot in any proper sense be described as an escape from assessment of the income of Burn & Co., or of the firm's partners.¹

Section 34 can only be brought into operation, if for any reason, income chargeable to income-tax has escaped assessment in any year.²

The question whether some income escaped assessment or was assessed at too low a rate is a question of fact and depends on the investigation of the circumstances of each case.³

Where a portion of the profits of a registered firm have escaped assessment, assessment can be made upon a member of the firm in respect of his share of the profits, in case the firm could not be proceeded against.⁴

Section 34 can be invoked only when the assessment proceedings have been completed. So long as the proceedings for assessment are pending and have not ended in a final assessment, the question of "escaped assessment" does

¹ *In re* Sir Rajendra Nath Mukerji, 1934 I. T. L. J. page 17 P. C.

² 61 Cal. 132 ; A. I. R. 1934 Cal. 515 ; A. I. R. 1931 Rang. 101 ; A. I. R. 1926 Mad. 237 ; 9 Rang. 28 ; A. I. R. 1931 Rang. 333 ; Lala Jagmohan Das Rastogi v. Commissioner of Income-tax, U. P., 3 I. T. C. 274.

³ A. I. R. 1931 Cal. 761 ; A. I. R. 1932 All. 81.

⁴ 35 C. W. N. 534.

not arise.¹ An income assessed in the hands of a wrong person to whom it does not really belong is an income that has been assessed, and the term "escaped assessment" would be applicable only if some income has so escaped or been assessed at too low a rate.² An income not capable of assessment cannot be said to have escaped assessment.³

Scope of section 34.—The correct scope of section 34 is to enable the Income-tax Officer to impose further tax on income which escaped assessment or which was assessed at too low a rate. Under this section, the income-tax authorities have no jurisdiction to revise a previous assessment and benefit the assessee on the ground that the previous assessment under section 23 (4) was too high. Nor can the whole assessment be revised when a portion of the income has escaped assessment.⁴ The Income-tax Officer has no jurisdiction to revise an assessment for the previous year which has been completed and has been final, and he cannot go behind and revise the assessment made by the Income-tax Officer in the previous year merely because he disagrees with his predecessor's finding as to the amount of assessable income.⁵ The jurisdiction conferred by section 34 is neither revisional nor in the nature of review, but is confined to the assessment or assessment at proper rate of the income which has escaped assessment or has been assessed at too low a

¹ A. I. R. 1931 Cal. 545; N. N. Burjoji v. Commissioner of Income-tax, Burma, 5 I. T. C. 270; 193 Rang. 111.

² Bulaki Saha v. Crown, A. I. R. 1927 Lahore 248; 1 I. T. C. 256.

³ A. I. R. 1931 Lahore 757 at 759 and 761.

⁴ 1931 A. L. J. 878.

⁵ Ulu Nyo v. Commissioner of Income-tax, Burma, 7 I. T. L. J. page 357 F. B.; A. I. R. 1933 Rang. 350; A. I. R. 1927 Lahore 248; 5 I. T. C. 24.

rate. Section 34 refers to a specific case, namely the case where an income chargeable to income-tax has escaped assessment or has been assessed at too low a rate. Where the rate is in question, the enquiry need not, under the section, go beyond the facts on which the raising of rate depends. The section does not require a re-assessment and the re-opening of the whole enquiry and every item under which income-tax is charged need not be considered afresh and a fresh assessment is not to be levied. The Income-tax Officer is bound only to confine himself to the particular item which has been omitted. The Income-tax Officer is not bound to determine afresh the correct taxable income of the assessee.¹ Where notice is given to an assessee under section 34 on the ground that his income has escaped assessment, it is always open to him to show that his income has not escaped assessment. But if his income has in fact escaped assessment, the defence that his other income was assessed at too high a rate, would not be open to him in proceedings under this section as the assessee is not entitled to re-open the whole assessment.² Nor is the Income-tax Officer bound to determine afresh the correct taxable income of the assessee, when the rate at which he is assessed is sought to be increased.³ The power of re-assessment under this section is conferred exclusively on the Income-tax Officer. Neither the Assistant Commissioner nor the Commissioner has the power of initiating proceedings under this section.⁴

¹ P. L. M. P. L. Palanippa Chettiar v. Commissioner of Income-tax, Madras, A. I. R. 1930, 126.

² A. I. R. 1930 Cal. 627 F. B.

³ A. I. R. 1930 Mad. 126.

⁴ Sheikh Abdul Qadir v. Commissioner of Income tax, 2 I.T.C. 372; 54 M. L. J. 298; A. I. R. 1928 Mad. 257.

Proceedings under section 34 are subject to limitations laid down by it, proceedings for assessment under the Act, and therefore where an assessee fails to comply notices validly issued and fails to produce his account books the Income-tax Officer can assess him under section 23 (4).¹

It is even open to the Income-tax Department to take action under section 34, even when once an assessment has been made under section 23 (4).² But as has been observed above, this does not empower the Income-tax Officer to revise his orders or those of his predecessors. Where the Income-tax Officer rejecting the assessee's accounts, made an assessment under section 23 (3) of the Income-tax Act estimating the profits from tobacco business at Rs. 30 per maund on a turnover of 787 maunds, subsequently confirmed by the Assistant Commissioner and the Commissioner, and a succeeding Income-tax Officer purporting to act under the section, reassessed the income estimating the quantity at 666 maunds but the profits at Rs. 60 a maund, it was held that this amounted to revision of the previous order, and was not covered by section 34, and the order of the Income-tax Officer was therefore illegal.³

An assessment under section 34 should not be based merely on surmises and hypotheses for which there is no sound foundation, but should be based on definite facts.⁴

¹ A. I. R. 1931 Cal. 209 F. B.

² Haji Taj Mohammad Haji Abdul Rahman v. Commissioner of Income-tax, U. P., 7 I. T. L. J. page 98.

³ U. Lu Nyo v. Commissioner of Income-tax, Burma, 7 I. T. C. 47, 1933.

⁴ Dey Brothers v. Commissioner of Income-tax, Burma, 1936 I. T. L. J. page 118.

Section 34 whether exhaustive, Assessment after the tax year.—It cannot be accepted that the inference to be drawn from section 34 is that it is only when the income has escaped assessment in the tax year or has been assessed too low in that year that an assessment may be made after the expiry of the tax year. It may be that in the two cases to which the section applies if no notice is served within the year following the tax year, no subsequent assessment or reassessment can be made of the income which has escaped assessment or has been assessed too low, but that is not to say that in no other case can an assessment be made after the expiry of the tax year.¹

Section 34 of the Income-tax Act is not exhaustive so far as the time is concerned.²

Assessment of income of a deceased person.—Where the estate of a deceased person is assessed either under sub-section (2) or sub-section (3) of section 24 B, there is no occasion to introduce the provisions of section 34, because the estate has not escaped assessment, but has been assessed under the Amendment Act 1933.³

Where a notice under section 34 has been served on a person and he has made a return in response thereto, the

¹ 61 I. A. 10; 61 Cal. 285; A. I. R. 1934 P. C. 10; 38 C. W. N. 319; 3 A. W. R. 272; 66 M. L. J. 121; 147 I. C. 663; 39 L. W. 266; 1934 All. L. R. 259; 59 C. L. J. 334; A. L. R. 1934 P. C. 79; 1934 M. W. N. 175; 1934 O. L. R. 176; 11 O. W. N. 236; 36 Bom. L. R. 267; 6 R. 68 P. C.

² The scope of the section considered. A. L. R. 1934 P. C. 79; 11 O. W. N. 236; 3 A. W. R. 272; 38 C. W. N. 319; 66 M. L. J. 121; 39 L. W. 266; A. I. R. 1934 P. C. 30 P. C.

³ *Darbaha Nasarwanji Mehta v. Commissioner of Income-tax, Bombay*, 1935 I. T. C. 62.

proceedings against the successor should not be started *de novo*. Proceedings under section 34 can be started against the successor of a deceased assessee.¹

Burden of Proof.—All that section 34 means is that if in the taxing year the income assessed is not the whole of the income in the year of assessment, then within a time limit prescribed in the section, it is open to the Income-tax authorities to reassess the portion omitted, whether the assessment previously made was inadvertent or deliberate or was due to a wrong allowance or improper deduction at a low rate. The burden of showing that the income has escaped assessment or that it has been assessed at too low a rate lies on the Income-tax Officer.²

Limitation.—The Act does not require that the assessment should be completed within one year. It only requires that the notice under section 34 should be served within that period.³ There is no limitation as to the proceedings after the service of notice.⁴

Notice—Form of.—There is no statutory form of notice prescribed in section 34 itself. All that the section requires is that a notice containing the necessary information be served. It has therefore been held that a notice in the form of a letter, instead of being in the common form prescribed by the Central Board of Revenue, but in fact containing all

¹ A. I. R. 1934 Mad. 63.

² Gopal Vajjnath Manohar v. Commissioner of Income-tax, Bombay, 1935 I. T. L. J. page 382.

³ Burn Company v. Commissioner of Income-tax, Bengal, 7 I. T. L. J. page 153; A. I. R. 1927 Lahore 248.

⁴ *In re Kedar Nath*, A. I. R. 1931 Cal. 209 F. B.; 35 C. W. N. 310.

the details provided for in that form of notice, is a sufficient compliance with the requirements of section 34.¹

Assessment under section 34 and imposition of penalty.—It has been held that a penalty cannot be imposed in respect of the return of income originally filed, in proceedings under section 34.² But section 28 is applicable to all proceedings under the Income-tax Act, and the Income-tax Officer can impose a penalty in reassessment proceedings under section 34 in respect of the fresh return filed in response to the notice issued in proceedings under that section.³

35. (1) The Commissioner or Assistant Commissioner may, at any time within one year from the date of any order passed by him 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 :

P. 106.

Rectification of mistake.

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

¹ A. I. R. 1934 Cal. 515 S. B.

² Messrs. Mayaram Durga Prasad v. Commissioner of Income-tax, U. P., 5 I. T. C. 471.

³ A. I. R. 1931 All. 421.

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.

Rectification of mistakes in assessments.—The power conferred upon the Commissioner or Assistant Commissioner of Income-tax or the Income-tax Officer by section 35 to rectify a mistake, whether on his own motion or on the application of an assessee, is confined to the rectification of mistakes patent from the facts or documents which were before him when he passed his revisional, appellate or original assessment order, as the case may be. This section does not confer on the Officers general power of review or authorise any assessee to introduce any new facts in connection with the said assessment. An Income-tax Officer should not correct mistakes in cases that have been dealt with by the Assistant Commissioner on appeal or the Commissioner of Income-tax, in revision without a reference to the Assistant Commissioner or the Commissioner of Income-tax, as the case may be. ¹

History.—This section was amended by the Income-tax Amendment Act III of 1928. Before the amendment the power of rectification of mistakes was confined only to the Income-tax Officer in respect of original assessments. Under the Act of 1918, the Collector could correct mistakes only when brought to his notice by the assessee. The present

¹ I. T. Manual, para 106, page 252.

section empowers the correction of mistakes by authority *suo motto*

Mistakes apparent on the face of the record.— This section is analogous to section 152 of C. P. C. which runs as follows:—

152. Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. (Section 152 of C. P. C.)

Amendment of judgments, decrees or orders.

The only difference between C. P. C. and this section is that under the C. P. C. the mistakes can be corrected at any time, while section 35 empowers the correction only within one year.

“Mistake is not mere forgetfulness¹; it is a slip made not by design, but by mischance².”

This section applies only to mistakes apparent on the face of records.

Where the assessee, owning five collieries, concealed the fact, had them separately assessed as owned by separate persons and disclosed the fact only when the real fact having come to knowledge of income-tax authorities, he was served with notice under section 34, to show cause why he should not be assessed at a higher rate based on the total income of the five collieries, whereupon he applied under section 35 for rectification of the original assessment, on the ground that his Bombay business, unconnected with colliery business, had suffered a loss, held, that section 35 did not apply to the

¹ Per Esher M. R. *Barroe v. Issacs*.

² Per Russel C. J., *Stroud*.

case, that there was no bonafide mistake and the rectification or refund could not be applied for in such a case, as there was no mistake in assessment apparent on the face of the record.

Held, further, that an order refusing to state a case and refer to the matter to the High Court was proper in such a case.¹

Rectification—Enhancement.—No rectification of a mistake can be made which has effect of enhancing the tax, without notice to the assessee and giving him an opportunity to have his say. Such a rectification cannot be made after the expiry of one year from the date of the demand.² Rectification of a mistake which has the effect of enhancing the tax made after a year is illegal.³

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

P. 107.

Tax to be calculated to nearest anna.

as one anna.

Elimination of pies from assessment.—Section 36 provides that in income-tax assessments or refunds 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. This provision has been made for the purpose of eliminating fractions of an anna from the accounts.

¹ Thirkamiji Jiwan Das v. Commissioner of Income-tax, Bihar and Orissa, 1 I. T. C. 406.

² *In re* Delhi Cloth Mills and General Mills Co. Ltd., A. I. R. 1929 Lahore 326.

³ Lasaram v. Commissioner of Income-tax, Lahore, A. I. R. 1927 Lahore 421.

Income-tax Officers should also be instructed not to attempt to work out the Income-tax due on fractions of a rupee. Fractions of a rupee in income should be entirely disregarded.¹

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 :—

P. 89, 106.
Power to take
evidence on oath,
etc.

V. of 1908.

- (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 ;

P. 89.

XLV of 1860.

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.

The words "and for the.....Code" in clause (c) were added by the Indian Income-tax Act XXII of 1930.

Income-tax Officer—if a court.—Section 37 shows that the Income-tax Officer is not a court except for certain purposes mentioned therein. There is nothing in the Income-tax

¹ I. T. Manual, para 107, page 252.

Act to suggest that the Income-tax Officer is a court for any purpose other than those mentioned in section 37. If it was the intention of legislature that the Income-tax Officer should be deemed to be a court, there would be no point in enacting this section and clearly specifying the points for which the Income-tax Officer would be deemed to be a court.¹ It was held that proceedings before an Income-tax Officer are judicial proceedings only for the purpose of sections 193 and 228 but not for section 196 I. P. C. and that a conviction under section 196 I. P. C. for the production of false accounts is bad in law.² The Act has since been amended as noted above, and so that an Income-tax Officer is now a court for the purposes of section 196 I.P.C. also. The view that an Income-tax Officer is not a court for other purposes than those specified is thus clear.

The Income-tax Officer not being a court the Indian Evidence Act has no application to proceedings before him.

Judicial proceedings—The Income-tax Act does not define what are judicial proceedings. The General Clauses Act gives the following definition of a judicial proceeding:—

“Judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath.”

Res Judicata and Estoppel.—Since an Income-tax Officer is not a court, the doctrine of *res judicata* can have no

¹ Sankaralinga Nader & others v. The Commissioner of Income-tax, Madras, 58 M. L. J. 269.

² Lal Mohan Poddar v. Emperor, 55 Cal. 423; Harmukhrai Dulichand, 56 Cal. 39.

application to his decisions.¹ It is always open to the Income-tax Officer to reopen a decision arrived at in a previous year after necessary enquiry, when fresh facts come to light and Income-tax Officer is entitled to disallow deductions in the year of assessment which were allowed by his predecessor.²

Investment of money from time to time in shares of various companies is not business within the purview of the Income-tax Act and a decision to the contrary in a prior year will not estop the Income-tax Officer from holding otherwise next year.³ Similarly, an Income-tax Officer is perfectly entitled to disallow salaries of partners allowed by his predecessor in a previous year, in the year of assessment.⁴

The judicial committee of the Privy Council has held that the function of the various income-tax authorities including appellate authorities is only administrative.

Their Lordships of the Privy Council observed :—

“The authorities are clear to show that there are tribunals with many of the trappings of a court, which nevertheless, are not courts in strict sense of exercising judicial power..... It may be useful to enumerate some negative propositions on this subject: 1. A Tribunal is

¹ Sankaralinga Nadar and Brothers v. The Commissioner of Income-tax, Madras, 58 M. L. J. 269; Messey & Co. v. Commissioner of Income-tax, Madras, A. I. R. 1929 Madras 458; 3 I. T. C. 309; Lakshminarain v. Commissioner of Income-tax, P. 3 I. T. C. 269.

² Deokinandan & Sons v. Commissioner of Income-tax, Delhi, A. I. R. 1930 Lahore 605.

³ Rai Saheb Lal Junda Ram v. Commissioner of Income-tax, Punjab, 3 I. T. C. 345.

⁴ Electric & Dental Stores v. Commissioner of Income-tax, Punjab, A. I. R. 1931 Lahore 341.

not necessarily a court in this strict sense because it gives a final decision, 2. Nor because it hears witnesses on oath. 3. Nor because two or more contending parties appear before it between whom it has to decide, 4. Nor because it gives decisions which affect the rights of subjects, 5. Nor because there is an appeal to a court. 6. Nor because it is a body to which a matter is referred by another body.”¹

Sections 193, 196 and 228 of I. P. C. are as follows:—

Section 193. Whoever intentionally gives false evidence in any
 Punishment for false evidence. stage of judicial proceedings, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of judicial proceeding, though the investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement

¹ Shell Company of Australia Ltd. v. Federal Commissioner of Taxation (1931 A. C. 275); Rex. v. Electricity Commissioners (K. B. 171).

which he knows to be false. As this enquiry is a stage of judicial proceeding A has given false evidence.

Section 196. Using evidence known to be false. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave fabricated or false evidence.

Section 228. Intentional insult or interruption to public servant sitting in judicial proceeding. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

The following provisions of C. P. C. are relevant for the purposes of determining the powers of an Income-tax Officer under this section.

Powers regarding enforcement and attendances of persons and enumeration on oath, compelling allowance of witnesses etc.

SUMMONS AND DISCOVERY.

Section 27. Summons to defendants. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

Section 28. Service of summons where defendant resides in another province. (1) A summons may be sent for service in another province to such Court and in such manner as may be prescribed by rules in force in that province.

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

Section 29. Summons issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts ;

Service of foreign
summonses.

Provided that the Courts issuing such summonses have been established or continued by the authority of the Governor-General in Council, or that the Governor-General in Council has, by notification in the Gazette of India, declared the provisions of this section to apply to such Courts.

Section 30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

Power to order
discovery and the
like.

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence ;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid ;
- (c) order any fact to be proved by affidavit.

Section 31. The provisions in section 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Summons to wit-
ness.

Section 32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may

Penalty for de-
fault.

- (a) issue a warrant for his arrest ;
- (b) attach and sell his property ;
- (c) impose a fine upon him not exceeding five hundred rupees ;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

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

Power to call for information.

- (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.

Para. (3) was added by the Income-tax Amendment Act XVIII of 1933.

For penalties for failure to furnish the return as required by this section see section 51 (c).

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

P. 89.

Power to inspect the register of members of any company.

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

Scope of Chapter V.—Sections 40 to 43 are only machinery sections and not taxing sections. This chapter deals with the class of persons, who, either by some inherent defect or quality in themselves, or on account of non-residence cannot be approached and dealt with directly. These do not affect the charging sections 3 and 10.¹

The sections, not being charging sections, the liability of the real owners of income for income-tax is not taken away by them. They only enable the Income-tax Officer to take steps to assess the trustees or guardians etc. as representing their separate beneficiaries or wards as the case may be, if they so choose. These sections do not compel the crown to have recourse to them.²

Sections 40, 42 and 43 are to be read jointly.³

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

P. 108.

Guardians, trustees
and agents.

¹ Commissioner of Income-tax, Bombay Trust Corporation Ltd. 54 Bom. 216; The Commissioner of Income-tax, Bombay v. The Remington Typewriter Co. Ltd., 35 C. W. N. 349 P. C.

² Commissioner of Income-tax v. Saidanab, A. I. R. 1932 Mad. 378; 55 Mad. 891 F. B.

³ A. I. R. 1928 Bom. 448.

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.

Income from properties or securities, etc., held under trust.—

Where any "property" (in the widest sense, but excluding a business) is held under Trust, the owner of that property, for the purposes of the Income-tax Act, is the beneficiary and the income is the income of the beneficiary. The Act does not permit of double taxation in the case of Trusts, viz., once in the hands of a trustee and again in the hands of a beneficiary. Under these sections, the guardians, trustees, agents, Courts of Wards, etc., are required to pay tax on income, profits or gains received by them on behalf of beneficiaries in the same manner and to the same amount as the beneficiaries themselves.

The following instructions should be followed in the assessment of such income :—

- (A) In cases not falling under section 40 or 41, the Trustee is merely to be regarded as an Agent. Receipt (actual or notional) of the income by him, or accrual of the income to him, is equivalent to receipt by or accrual to the beneficiary. Whether the income be distributed or allowed to accumulate, the beneficiary is to be assessed in respect of it. There is no provision for taxing the Trustee in respect of it. The beneficiary may, of course, apply for any refund that may be due. The Trustee cannot do so.
- (B) In cases falling under section 40 or 41, the position is the same except that the Act here provides for recovery of the tax from the Trustee. (a) Where the Trustee holds the entire property in the widest sense of the beneficiary, the assessment should be made on the Trustee, the tax will be recovered from him and he may apply for refunds. The

assessment will be made as though the income from the trust property were the total income of the Trustee. The assessment will of course be quite distinct from that on any other income in respect of which the same person may be Trustee and from that on the Trustee's own individual income. (b) If the Trustee does not hold the entire property of the beneficiary, the assessment on the total income of the beneficiary will be made in the name of the beneficiary and the tax in respect of so much of the income as is received by the Trustee will be recovered from the Trustee, who may also apply for any refund due in respect of such part of the income, which refund will be calculated with reference to the total income of the beneficiary. These instructions are equally applicable alike (a) where the Trustee simply receives dividends, interest on securities or other income on behalf of, and pays such income to, the beneficiary, and (b) where he receives dividends, interest, or other income on behalf of the beneficiary and pays a fixed sum out of the income to the beneficiary. If the balance of such income accumulates for the benefit of the beneficiary, it is to be regarded as his income of the year in which it accrues or arises to or is received by the assessee.

As regards the question as to who should apply for refunds in respect of interest on securities belonging to estates vested in the Administrator General or Official Trustee (see paragraph 116).¹

Income from business conducted by Trustees.—Where a business is conducted by a Trustee or Trustees on behalf of beneficiaries, the assessment is to be made on the Trustee or Trustees conducting such business, whether section 40 or 41 is applicable or not. If there are Trustees, they should be treated as an association of individuals (see judgment of the High Court, Lahore, in *Hotz Trustees v. Commissioner of Income-tax, Punjab*, Reference No. 8 of 1930 (V. Srinivasan Tax Cases, page 8). The tax will be assessed on and recovered from the Trustee. In the hands of the beneficiary or beneficiaries, the income of a business thus conducted by Trustees will not be taxed again (Section 14 (2) (c)). It will, therefore, be treated exactly as though it were a share of the profits of an

¹ I. T. Manual, para 108, pages 252-253.

unregistered firm. Its inclusion in his total income may raise the rate of tax leviable on the remaining income of a beneficiary or render that income liable to super-tax. The Trust income in the hands of the beneficiary should not itself be subjected to super-tax a second time if it has borne super-tax in the hands of the Trustees, though legally it is liable to be so subjected. Similarly where the income of a trust is from sources other than business and the trustees are assessed to income-tax and super-tax on the total income of the trust, super-tax should not be levied a second time on what a beneficiary might get from that income as his share.

The above principles will apply even to cases in which there is a single trustee to execute the trust concerned.¹

Scope of section 40.—Section 40 has been enacted to provide for the recovery of tax in certain cases without in any way affecting the liability to be taxed under the charging sections 3 and 10.² The section contemplates (1) that the person to be charged must be either a guardian, trustee, or agent of another (2) that the trust be in direct receipt of the income of such person chargeable to income-tax, under the charging section (3) that the minor, lunatic or idiot or non-resident, should be a person liable to income-tax, if he were not a minor, lunatic, etc.

Residing.—The Act does not say as to what constitutes residence for the purpose of Income-tax, it is laid down that a person is said to reside at a place, where he, (1) ordinarily lives, (2) has his dwelling house and occasionally occupies it or (3) maintains a dwelling house and occasionally occupies it. A person is said to reside at a place where he lives with his family and sleeps at night, not his place of business or one of his several places of business.³ Working at a place during

¹ I. T. Manual, para. 109, pages 253-254.

² Hotz Trust & Simla v. Commissioner of Income-tax, A. I. R. 1930 Lahore 929.

³ Parker's Election Agent and Returning Officer, page 243.

business hours as an employee of a Railway Company has been held not to constitute residence.¹ A person may reside at a place constructively. For constructive legal residence two things are necessary : (1) the liberty of returning at any time to the house or apartment and (2) no abandonment of the intention to return whenever it may suit the party's pleasure or convenience to do so.² A firm, which had an office in United Kingdom and one of the partners of which spent 4 months in the year in England was held liable to tax.

Mathew J. said :

" Mr. Powell raised another ingenious objection under section 41 of the 5th and 6th Vict. C. 35, and his point was that an English firm Messrs. Fenerbeerd were within the meaning of that section, the persons chargeable and assessable with this tax, and were the only persons chargeable and assessable with this tax, and that even though it appeared that the foreign principal was in this country from time to time served with every notice which he is required to be served with under the Act, and bound to make the return pointed out by the Act, receiving the notice ; nevertheless the Income-tax Commissioners have no power to receive from him the amount of the assessment, but must make their charge against the agent, and against the agent only. The language of the section justified for the moment that construction of it, but when you look at section 41, and afterwards at section 44, it seems to me perfectly clear that section 41 is intended to aid the Commissioners in recovering the tax, and not to alter the incidence of taxation in any way. That is manifest to my mind from section 44 which points out the object of section 41. Under section 44 the agent who has charge under section 41 is entitled to recover from his principal, as the person really liable, any payment he may make. If the principal can be got at there is no need to have recourse to section 41 or to have recourse to section 44. Where the case arises, contemplated by section 41, one resident abroad who cannot be reached by the Commissioners, then the Commissioners are entitled to fall back upon the valuable and useful provisions contained in those two sections."

¹ A. I. R. 1924 All.

² Allahabad and Surat Cities Cases, I. L. R. Vol. 4, page 1 ; Ford v. Hard, 9 L. R. C. 273.

Per Smith J. :

"I am clearly of opinion that section 41 was not passed in derogation of the rights of the Revenue, but it was passed to aid them. The principal if he can be served with notice, if he is in the country and the notice prescribed by sections 48 and 52 can be served, it seems to me there is no reason whatever, as he is carrying on a trade in the country, why he should not be the person to return the profits of the trade which he exercises in this country. It seems to me that section 41 is passed to prevent this ; that where a person though trading in this country, whether a subject of Her Majesty or not is not resident so that in reality the revenue cannot serve the proper notice and cannot get at the principal, then they should be entitled to serve the agent who is carrying on that trade in behalf of the principal in this country. In this case Mr. Tischler is here for some months in the year ; he is capable of being served, he can be served, and is served, and it seems to me, therefore, that he is the proper person to return the profits which he makes by exercising a trade within the United Kingdom."¹

In receipt etc—It is necessary that the guardian etc., must be in receipt of income to render him liable to tax.² In this respect Indian Income-tax Law is at variance with English Law on the subject. In England in order to make a trustee guardian etc., liable to be taxed, it is necessary that the trustee or the guardian concerned, should have control over the property of the incapacitated person. In India mere receipt of income is enough to make the recipient liable to tax.

This section is a collecting section and not a taxing section, and there is no reason in principle why it should not receive a liberal interpretation. It would, in my opinion, be too narrow a view if it were held that the section was only

¹ Tischler v. Apthorpe, 2 T. C. 89.

² The Bombay Trust Corporation Ltd. v. The Commissioner of Income-tax, Bombay, 3 I. T. C. 135 ; 52 Bombay 702.

applicable if the guardian or other person mentioned in this section actually managed or held the control of this property or concern from which the profits or gains sought to be assessed arose. It seems to me enough that the guardian or other person should receive and have the direction and application on behalf of the owner of the profits and gains sought to be assessed.¹

Minor—liability to tax.—There is nothing in the Act to warrant the inference that a minor without a guardian cannot be taxed at all. It has been held that a minor, who received income liable to tax, can be charged, though he may have no guardian.

Per Cozens-Hardy, M. R. :

“ It is argued that it is a great hardship thus to assess and charge an infant, because he has not the requisite discretion to make the return, and to defend the proceedings or to appeal as is contemplated by the Act. I am not pressed with this difficulty. By section 48 ‘ every person chargeable ’ which includes an infant, is to receive from the assessors notice requiring the delivery of certain particulars, and, if he does not deliver such return, the assessors may proceed, in his absence. It is to my mind almost absurd to suggest that a jockey making a large income, and, I presume, assisted by clerks or other servants, has not the requisite discretion to enable him to deliver or procure to be delivered, all proper particulars, and, if necessary, to instruct legal advisers to protect his rights. But however that may be, I think the Statutes have made the infant ‘ chargeable ’ and ‘ assessable, ’ and therefore liable to pay income-tax.

Great stress was laid on the analogous case of a person of unsound mind. But I see no reason to doubt that the same considerations would apply to that case. If the person of unsound mind was carrying on a business under his own control and management, I think he would be chargeable and assessable in the same manner, and to the same extent as the infant in the present case.”

¹ Drummond v. Collins, 6 T. C. 625.

Per Phillimore, L. J.:

“It was argued before us that the making of a return is a matter of difficulty, and that an infant is not supposed by the law to be capable of doing such difficult business matters; that every subject who is assessed has a right to appeal, and that an appeal is in the nature of a *lis*; and that no *lis* in which an infant is concerned can be conducted in the Courts unless he has a guardian *ad litem*. I think the answer is that in most, if not quite all, of the rare cases in which an infant becomes chargeable under Schedule D, it would be because of his exceptional and precocious skill; that such an infant may be presumed to be capable of either making a return or of instructing and paying some competent adviser, and that the analogy of a *lis* must not be pushed so far.

It is not necessary to consider what might be the decision, if the infant had a guardian having the direction and control or management of his property, and the Crown was minded nevertheless to require a return from the infant. But in the case the decision on another part of the same section, viz., *Tischler v. Apthorpe* (2 T. C. 89) approved as it was in this court in the case of *Werle & Co. v. Colquhoun* (2 T. C. 402), would have to be reckoned with.”¹

Trustee and beneficiary—Legal Relationship of.—
The Legal Relationship of Trustee and Beneficiary: Per
Viscount Sumner:

“The trustee has the full legal property in the whole of the trust fund and the beneficiary has not. Apart from special provisions—in particular settlements which do not affect the general principle—the trustee is not the agent of the beneficiary who can neither appoint or dismiss him. She (the beneficiary) cannot require him to change or forbid him to change the particular investments of the fund. There is no liability on the beneficiary for the trustee’s acts on the principle of respondent superior and, unless the trust deed otherwise provides, the trustee must act without remuneration to himself and cannot in any case sue the beneficiary on any implied promise to pay. It is the trustee alone who can give a discharge for interest, rent or dividends to the parties who have to pay them, in respect of the invested trust estate, nor

¹ *Ren v. Newmarket Commissioners of Taxes*, 7 T. C. 49.

need they know the beneficiary in the matter. All that the latter can do is to claim the assistance of a court of enquiry to enforce the trust and to compel the trustee to discharge it. This right is quite as good and often is better than any legal right, but it is not in any case one which for any purposes makes the trust fund "belong" to the beneficiary or makes the income of it accrue to him instantly and directly as it leaves the hand of the party who pays it."¹

In like manner and to the same amount.—These words place a limitation on the extent to which the trustees, etc., can be taxed under this section.

The Extent of the Liability of the Trustee or Agent:
Per Scrutton L. J. :

"It seems clear that so far as income-tax is concerned, the liability of the trustee or agent does not exclude the liability of the principal, whether incapacitated or non-resident; and vice-versa. It also seems clear that for income-tax purposes the liability of the trustee or agent is limited to the profits which he controls or manages; and though the limitation of the liability of the agent to profits received has been removed by the Finance (No. 2) Act, 1915, section 31 (now Act of 1918, General Rules, No. 5), I think the liability for income-tax of the trustee or agent is still limited to the British property or trade he controls or manages, though he does not "receive" the profits, and does not extend to all British profits of the principal, though the trustee or agent has nothing to do with part of those profits, still less to all profits whether British or not. There may be an assessment for income-tax on the trustee or agent in respect of part of the profits, just as there may be a partial assessment on a resident principal, or one of full capacity."

Per Viscount Sumner :

"In the case of Income-tax the extent of the liability, depending as it does on the various schedules and cases under which the particular part of the property is being assessed, is limited to the income of the property which is under the trustees' control and is assessable within the particular assessment area. If the trustee returns and pays on that, he is not further

¹ Archer-Shee v. Baker, 11 T. C. 749 at 766.

chargeable, although the infant may be beneficially interested in other taxable property over which that trustee has no control at all. The manner in which he is made liable is by the method of local and separate assessments provided for income-tax. Exemptions and deductions are the subject of a separate manner of reclaiming tax already paid, which the trustee is not, as such, in any way concerned.¹

The Income-tax Officer is to ascertain the liability of the beneficiary according to the Income-tax Act, by ascertaining the income after making allowance for all allowable deductions, and after this is done to recover the tax from the trustees, etc., who are the persons to be assessed to tax to which the beneficiary is liable.²

British Trustees of Foreign Beneficiaries.—Income from foreign investments, received abroad by a person not resident within British India, is not liable to tax simply because the trustees reside in British India. As the claim to tax such income the following observation from an English case may be quoted with advantage.

Viscount Cave said :

“ I think it is clear that such a proposition cannot be maintained. It is contrary to the express words of Section 42 of the Income-tax Act, 1842, which provides that no trustees who shall have authorised the receipt of the profits arising from trust property by the person entitled thereto, and who shall have made a return of the name and residence of such person in manner required by the Act, shall be required to do any other act for the purpose of assessing such person. And, apart from this provision, a decision that in the case of trust property the trustee alone is to be looked to, would lead to strange results. If the legal ownership alone is to be considered, a beneficial owner in moderate circumstances may lose his right to exemption of abatement by reason of the fact that he has wealthy trustees, or

¹ The Commissioner of Inland Revenue v. Pakenham and others, 13 T. C. 573.

² Tischler v. Aphorpe, 2 T.C. 89; Williams v. Singer, 7 T. C. 37.

a wealthy beneficiary may escape super-tax by appointing a number of trustees in less affluent circumstances. Indeed if the Act is to be construed, as counsel for the Appellant suggests, a beneficiary domiciled in this country may altogether avoid the tax on his foreign income spent abroad by the simple expedient of appointing one or more foreign trustees. Accordingly, I put this contention aside. On the other hand, I do not think it would be correct to say that, whenever property is held in trust, the person liable to be taxed is the beneficiary and not the trustee. Section 41 of the Income-tax Act, 1842, renders the trustee, guardian or other person who has the control of the property of an infant, married woman or lunatic, chargeable to income-tax in the place of such infant, married woman or lunatic; and the same section declares that any person not resident in Great Britain shall be chargeable to the name of his trustee or agent having the receipt of any profits or gains. Section 108 of the same Act, which deals with the profits or gains arising from foreign securities provides that, in default of the owner or proprietor being charged, the trustee, agent or receiver of such profits or gains shall be charged for the same. And, even apart from these special provisions, I am not prepared to deny that there are many cases in which a trustee in receipt of trust income may be chargeable with the tax upon such income. For instance, a trustee carrying on a trade for the benefit of creditors or beneficiaries, a trustee for charitable purposes, or a trustee who is under an obligation to apply the trust income in satisfaction of charges or to accumulate it for future distribution, appears to come within this category, and other similar cases may be imagined. The fact is that, if the Income-tax Acts are examined, it will be found that the person charged with tax is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach. The object of the Acts is to secure for the state a proportion of the profits chargeable, and this end is attained (speaking generally) by the simple and effective expedient of taxing the profits where they are found. If the beneficiary receives them, he is liable to be assessed upon them. If the trustee receives and controls them, he is primarily so liable. If they are under the control of a guardian or committee for a person not *sui juris* or of an agent or receiver for person resident abroad, they are taxed in his hands. But in cases where trustee or agent is made chargeable with the tax, the statutes recognise the fact that he is a trustee or agent for others, and he is taxed on behalf of and as representing his beneficiaries or principals. This is

made clear by the language of many sections of the Act of 1842. For instance, section 41 provides that a person not resident in Great Britain shall be chargeable "in the name of" His trustee or agent. Section 44 refers to the trustee or agent of any person as being assessed "in respect of" such person, and gives him a right to retain the tax out of any money of such person coming to his hands. Section 51 under which trustees and others are bound to make returns, refers to the event of the beneficiary being charged either "in the name of" the trustee or other person making the return or in his own name. Section 53 refers to the trustee or agent as being charged "on account" of the beneficiary, and similar expressions are found in other sections. In short, the intention of the Acts appears to be that, where a beneficiary is in possession and control of the trust income and is *sui juris*, he is the person to be taxed, and that, while a trustee may in certain cases be charged with the tax, he is in all such cases to be treated as charged on behalf or in respect of the beneficiaries, who will accordingly be entitled to any exemption or abatement which the Acts allow."

Per Lord Phillimore:

"It was suggested by counsel for the Appellant that the Income-tax Acts, except in certain special and rather narrow instances, took no account of the position of the trustees, but regarded only the legal ownership. On the other hand, from some of the language in the judgment of the court of appeal, especially that of Lord Justice Warrington, it would appear that a contention that the Income-tax Acts looked generally to the beneficiary and disregarded the trustee, except as a means of reaching the beneficiary in certain rare cases, had found favour. I do not propose to express an opinion whether either, or which of either, of these two extreme views is right The very essence of the position of a trustee is that he is a person who at law has all the rights of an owner, but who has nevertheless the obligation, which he has undertaken by accepting the trust, of using his powers as legal owner for the benefit of some person not himself or some object not his own. It may perhaps be said that, where there is a trust for accumulation or for payment of debts, no person can be said to be entitled to the

receipt of the profits and that in such case the trustee is to be the person to be assessed”¹

Untaxed interest received by trustees—Per Lord President Clyde :

“The trustees’ objection to their assessability rests on a very broad proposition ; they say that the Income-tax Acts afford no warrant for the assessment of trustees to income-tax on any part of the income of the estate under their charge, except in two cases (1) when the trustee acts for an incapax, and (2) when he acts for a non-resident ; but even in those cases only to the extent in which the incapax or the non-resident would himself be liable to assessment but for his incapacity or absence, *i.e.*, to the extent of the income of the incapax or non-resident, as distinct from the general income of the trust. . . . the proposition maintained by the trustees is as startling as it is novel ; and I think it accords but ill with what has hitherto been the settled practice both of the tax-gatherer and the tax-payer. Admittedly, it has been suggested, if it may not be justified, by the opinion—and in part at least by the grounds of judgment—of the House of Lords in two recent English cases, *Williams v. Singer*, 2 and *Archer-Shee v. Baker* 3, and particularly in the latter.

In the first of these cases it was decided that home trustees who had shares in a foreign company and were therefore entitled to receive the income thence arising, but who had given a mandate to the foreign company to pay the said income to a foreign beneficiary direct, were not assessable to income-tax upon the income so paid.

In the second of those cases, a home tax-payer who was entitled to income arising from a trust estate consisting *inter alia* of foreign stocks, and shares, held for her in life-rent by foreign trustees under her father’s settlement, but who arranged with the foreign trustees to have the balance of this income, after meeting the expenses of the foreign trust, paid into a foreign bank on her account, was held to be assessable (per her husband) to income-tax in respect of the whole of such income. The ground of the decision was that the whole of the income in question was income arising or accruing to her from foreign stocks and shares, and not to her father’s trustees.

¹ *A. W. Williams v. W. M. G. Singer & others* and *A. F. Pool v. Royal Exchange Assurance*, 7 T. C. 38.

In both the two English cases above referred to, there are undoubtedly dicta enunciated without apparent qualifications, which point to the complete elimination of trustees in the matter of assessability to income-tax; but such a consequence was not, I humbly think, really contemplated by the decisions pronounced nor in the judgments by which those decisions were supported. On the contrary, it was recognised that there are many cases in which trustees are assessable, albeit as trustees having no beneficial right of their own to the income. It has never been suggested that trustees who are immediately entitled to uplift the rents of heritage are not themselves assessable to tax under Schedule A, although the beneficial interest in the annual value of the property does not belong to them. Nor has it been even suggested that if trustees are occupiers of land (say, a farm) from which they derive profit on behalf of the trust estate, they are not assessable under Schedule B or Schedule D, as the case may be, in respect of the profits of such occupation, although these profits are earned for others and not for themselves. In neither of the English cases referred to was it doubted that the trustees carry on a trade or business—as they not infrequently have to do, at least for a time—they are assessable under Case 1 of Schedule D; although again the balance of their profits and gains is theirs only in a representative capacity. It is, moreover, clear from Section 25, Income-tax Act, 1913, that the assessability of trustees on income which is subject to accumulation had been assumed by the draughtsman of the section. My own opinion—for what it is worth in view of the two cases above referred to—is that trustees are the proper persons to be assessed in all cases in which the income of trust estate received by them, or to which they are entitled, is not tax deducted at source; and that in the case of income of the trust estate which is taxed—deducted at source—they could not be heard to ask repayment of the tax on the plea that the income did not arise or accrue to them but to others, whether such others were income beneficiaries or capital beneficiaries. There is nothing inconsistent with the Income-tax Acts in recognising and respecting the distinction between property owned by a person as trustee and property owned by him to his own right.¹

Liability of an executor for assessment.—It was held in case under the Income-tax Act II of 1886, that income

¹ Reids' Trustees v. Commissioners of Inland Revenue, 14 T.C. 519.

accruing to an executor under a will is income as defined in section 3, of the Act and was liable to tax, under the Act of 1886, however, the income was assessed in the hands of whomsoever it might accrue or arise. It was the duty of the collector to determine that person or persons were chargeable to tax in respect of that income.¹ But under section 3 of the present Act, the persons in whose hands income is liable to tax are "individual, Hindu undivided family, company, firm and other association of individuals." It is open to doubt if an executor under a will can be brought within the meaning of the word individual as used in section 3 above referred to. See also notes to section 10 (2).

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 amounts 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.

Court of Wards,
etc.
P. 108.

Section 41 is only confined to Court of Wards, Officials, Trustee, Receivers or Managers under the orders of a Court. The list is not exhaustive.

¹ Forkes v. Secretary of States for India, 55 Cal. 151.

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.

Non-residents.

P. 15, 69, 110, 111.
R. 33, 34, 55.

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.

P. 115.

(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

P. 111, 112.

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 accounts not actually spent, for the purpose of earning such profits or gains.

Rule 33. In any case in which the Income-tax Officer is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India cannot be ascertained, the amount of such income, profits or gains for the purposes of assessment to income-tax may be calculated on such percentage of the turnover so accruing or arising as the Income-tax Officer may consider to be reasonable, or on an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the provisions of the Indian Income-tax Act) as the receipt so accruing or arising bear to the total receipts of the business, or in such other manner as the Income-tax Officer may deem suitable.

P. 111.

Rule 34. The profits derived from any business carried on in the manner referred to in section 42 (2) of the Act may be determined for the purposes of assessment to income-tax according to the preceding rule.

P. 111.

Rule 35. The total income of the Indian branches of non-resident insurance companies (Life, Marine, Fire, Accident, Burglary, Fidelity, Guarantee, etc.) in the absence of more reliable data may be deemed to be the proportion of the total income, profits or gains of the companies, corresponding to the proportion which their Indian premium income bears to their total premium income. For the purpose of this rule, the total income, profits or gains of non-resident Life Assurance Companies whose profits are periodically ascertained by actuarial valuation shall be computed in the same manner as is prescribed in rule 25 for the computation of income, profits or gains of Life Assurance Companies incorporated in British India.¹

P. 111, 141.

Non-residents. Income other than from business.—Under section 4 (1) tax is payable in respect of all income, profits or gains accruing or arising in British India or deemed under the provisions of the Act to accrue or arise or to be received in British India, whether the recipient resides in British India or not. There is little difficulty regarding income arising in British India and receivable by non-residents under the heads "salaries," "interest on securities," "property," "professional earnings," or "other sources." In cases of income from "interest on securities" and "salaries" income-tax is deducted at the source, and in the case of income under the other heads a non-resident is usually represented by an agent (section 42 (1)). No difficulty has been experienced in determining whether income under any of those heads is taxable.²

¹ I. T. Manual, Rules 33 to 35.

² I. T. Manual, para. 110.

Non-residents. Income arising from business in India.—(1)

There is no precise definition in the Act which can be used as a test for determining in every particular instance whether a non-resident is or is not carrying on business in British India and how the amount of taxable profits is to be arrived at. Section 42 of the Act contains special provisions regarding non-residents, and rules 33 to 35 prescribe the manner in which and the procedure by which the income, profits and gains may be arrived at in the case of non-residents. Instances are given below of the method to be adopted in dealing with typical cases :

- (a) Indian branches of non-resident firms are liable to assessment under the Act. In order to secure an accurate assessment in such cases, sections 22 (4) and 37 enable an Income-tax Officer to require the production of the balance sheet and profit and loss account of the firm as a whole in addition to that of Indian branch, and also to require the submission of a detailed statement of all the profits credited to the personal account of the head office on account of transactions carried out on its behalf. In some instances, however, the form adopted for the accounts and balance sheets of the head office or the Indian branch does not enable the share of profits properly due to the Indian branch to be accurately gauged, while there are certain firms which keep no accounts at all either at their head office abroad or at their branch offices in India. Rule 33 gives Income-tax Officers wide powers to determine how the profits of the Indian branch shall in these circumstances be calculated and enables them to fix as the income of the Indian branch for assessment purposes either a percentage of the turn-over of the business done by the branch or, where this procedure proves unsuitable, an amount which bears the same proportion to the total profits of the business as the Indian receipts bear to the total receipts of the business, or, where neither of the above methods proves suitable, any other more reliable method of calculation. In the case of shipping companies in particular the most suitable method of assessing the Indian branch is usually to calculate tax on the same proportion of the total profits of the

company as the Indian receipts of the company (meaning thereby the sums received either in India or elsewhere on account of goods shipped or passengers carried from India) bear to its total receipts. In the special case of the Indian branches of non-resident insurance companies (life, marine, fire, accident, burglary, fidelity, guarantee, etc.), it will probably be found both feasible and equitable to adopt the provisions of rule 35 and assess these branches on the proportion of the total profits of the companies corresponding to the proportion which their Indian premium income bears to their total premium income.

- (b) Indian firms allied to non-resident firms of which they are not technically either branches or agencies often succeeded in the past in escaping their proper taxation by a manipulation of accounts with the parent non-resident companies. To cite an example, a foreign firm dealing in aniline dyes was registered as a separate limited liability company in India with a capital of Rs. 20,000. The shares were never placed on the market in India, but, with the exception of small holdings by managers in India, were all held abroad. The registered capital was nominal in comparison with the value of the stock-in-trade and the parent company abroad sold to the subsidiary Indian Company at a price leaving a margin just sufficient to cover the expenses of the subsidiary company, or causing an actual loss to be shown. Section 42 (2) of the Act is designed to prevent a subsidiary Indian firm or company from benefiting by such a manipulation, and enables an Income-tax Officer to assess it on the profits which may reasonably be deemed to have been derived from its Indian business, while where any difficulty is experienced in arriving at a basis for assessment, assessment on a percentage of turn-over, or other suitable method can be adopted under rule 34. It is to be noted that the provisions of section 42 (2) are not applicable where the parent non-resident firm or company is constituted within the British Empire and that the liability to assessment is placed on the subsidiary Indian firm as principal and not as an agent.

(c) Indian agents of non-resident firms of which they are not technically either branches or subsidiary firms are liable for the payment on account of their principals, of the tax on their principals' Indian profits under the provisions of section 42 (1) and 43 of the Act. It will be observed that these provisions permit the levy of the tax on a non-resident's business not only where he has established a regular agency in India but also where he conducts his business regularly through a particular agent or casually through various agents. In this case it is not necessary that any thing of the nature of a regular agency should exist in order to make the profits of a non-resident chargeable in the name of an agent. They are so chargeable even when the only connection between the non-resident and the person acting as his agent is that that person is ordinarily and regularly employed as an agent by the non-resident. The Government of India do not, however, desire that in practice the liability to assessment should be enforced except where something definitely of the nature of an agency exists and in particular no attempt should be made to tax the profits of a consignment business pure and simple, merely because the non-resident consignor habitually uses a particular resident as his agent.

In all cases it will be a question of fact whether the connection between the non-resident and the resident is such that an agency can be held to exist. "Agency" for the purposes of this section should be interpreted to mean a regular, not casual, agent and one whose relation to the non-resident principal is such that the principal may reasonably be held to be trading "in the country" and not merely "with the country". If, for example, there is no privity of contract between a foreign principal and a resident who purchases the foreign principal's products through another resident or if the resident vendor has to bear any bad debts arising out of such transactions, the resident vendor is not to be treated as the agent of the non-resident. Even if a non-resident does not bear bad debts, he will be considered to be trading in the country (if there is privity of contract) if the agent receives a *del credere* commission, i.e., an additional commission in consideration of guaranteeing the non-resident against bad debts, or if the rate of commission is so unusually high as evidently to be

intended to include a *del credere* commission though none is specifically mentioned. It is doubtful whether it is practicable to formulate for the guidance of Income-tax Officers any more definite principles than those stated above; but the following examples may serve to indicate the lines on which decisions should be reached :—

- (a) B, a distiller in Glasgow, has agreed to sell to no one in India except A, his agent, provided that A gives B all or an agreed proportion of his trade. A purchases from B and sells to the trade at his own rates, and all bad debts are A's. No attempt should be made to tax B on his profits. His position, in spite of his supplementary agreement with A, is merely that of a seller to an Indian consignee who takes the risks or profits of the trade in India.
- (b) A, an Indian resident and a large supplier of mill stores, has a monopoly for the sale in India of the belting of a non-resident B, A is paid commission by B on all orders he sends either for his own stock or risk or in execution of orders obtained. He does not confine his purchases of belting to B. He stands all loss from bad debts and fixes the prices to be asked for the goods. Here again the position of B is merely that of a seller to an Indian consignee, and no attempt should be made to tax B's profits.
- (c) A is the Indian agent for hardware and sundries of B, a British manufacturer. A receives salary and commission from B and bad debts fall on B. Here there is a regular agency and B's Indian profits should be taxed through A.
- (d) A is the Indian agent for B, a firm in an Indian State, who consigns goods for sale in Bombay and China through A. The business is purely a consignment business and B's profits on his Indian trade should not be taxed.

In all these cases A's remuneration or profits as agent are liable to the tax.

- (d) Casual agents for non-resident firms to whom goods are from time to time consigned have been dealt with in (3) above and no attempt should be made to tax the profits of a non-resident through the agent on this class of business.

(e) As regards taxation of interest on money lent by a non-resident to a resident in British India, it has been held by the Privy Council in the case of the Bombay Trust Corporation as agent of the Hongkong Trust Corporation that there can be a business connection within the meaning of sections 42 and 43 of the Act between a resident borrowing money from a non-resident and a non-resident lending money to a resident, and that the former can be treated as the statutory agent of the latter, under section 43 of the Act. This decision is to be followed wherever it is applicable. Where, however, a resident takes for a short period, a casual and isolated loan from a non-resident with whom he has no regular or continuous dealings, it need not be held on the strength of that fact alone that there is a business connection within the meaning of the above section and that the resident is liable as agent on the interest paid to the non-resident.

In the Madras High Court Case No. 4 of 1921, Chief Commissioner of Income-tax, Madras v. Bhanjee Ramjee & Co. (I, Srinivasan Tax Cases, page 147), it has been held that a person who is not a resident in British India but to whom income arises or accrues through business connections in British India is assessable to income-tax under sections 4 and 42 (1) of the Act whether he is a British subject or a foreigner and that the provision in the latter section that such income shall be taxable in the name of the agent of any such person does not mean that it is not chargeable unless assessed in the name of an agent. It will be clear from section 42 (3) that the entire profits of a branch or agency of a foreign firm importing goods in British India are liable to tax in British India irrespective of where the profits accrued or arose, and whether received in British India or not. Thus if a foreign manufacturer has an agency or branch in British India and sells his products through it in British India, he is liable to tax on his manufacturing profits as well as on the merchanting profits—while a foreign head office is not allowed to charge a notional commission to its branch or agency in British India on goods exported to the branch or agency and sold by it in British India.

If it is desired to assess a non-resident who has no resident agent through whom such assessment can be made, and whose entire income

also cannot be taxed at source or indirectly, a notice under section 22 (2) should be served upon him as early as possible in the year by registered post (acknowledgment due) allowing plenty of time for the return to be made. If he then fails to make a return, or to comply with subsequent notices calling for the production of accounts, etc. (in which also ample time should be allowed for compliance), an assessment may be made under section 23 (4). When serving such notices on a non-resident, he should be invited in a covering letter to appoint an agent to represent him for income-tax purposes in India.

Non-residents whose income arises in more than one province, and who are assessed direct and not through statutory agents under section 43 of the Act, will be assessed by the Income-tax Officer, Non-residents Refund Circle, Bombay, who will also deal with applications from them for relief, whether under section 48 or under section 49 of the Indian Income-tax Act, 1922 or under any Notification issued by Government under section 60 (1) of the Act, providing for relief on account of double payment of income-tax.

Non-residents whose income arises in a single province, and who are assessed direct and not through statutory agents under section 43 of the Act, will be assessed by one or more special Income-tax Officers appointed by the Commissioner of Income tax in the province concerned.

When a statutory agent has been appointed under section 43 of the Act for the recovery of income-tax or super-tax from a non-resident, whether his income arises in a single province or in more than one province, the place of assessment will be determined by the provisions of section 64 of the Act as applied to the agent, since under section 42 the agent is, in respect of the income which is to be chargeable in his name, to be treated for all purposes as the assessee. The place of assessment will accordingly be the place where the agent carries on the business by virtue of which the income-tax is chargeable in his name under section 42 or where he resides, as the case may be. It should be noted that sections 42 and 43 do not apply to income-tax which has already been recovered from a company or registered firm, although they apply to the levy of super-tax on income of a non-resident which consists of dividends from such a company or a share in the profits of such a firm. Income-tax Officers should, therefore, decline to appoint statutory agents for non-residents

who are not liable to super-tax and whose income is confined to shares in registered firms or dividends of companies.

When an Income-tax Officer starts assessment proceedings against a non-resident, he should inform him or his agent that if the non-resident is entitled to any refund under section 48 or section 49 he must fill in the necessary forms including the return of world income. If a statutory agent wishes to make such a claim for refund on behalf of the non-resident who is being assessed through him, he should be required to show that he has been duly authorised in proper legal form to send the necessary forms so that his act will bind his principal (paragraph 90). Subject to the satisfaction of this condition the assessing Income-tax Officer, if he is not himself the Income-tax Officer, Non-residents Refund Circle under clause (v) above, may undertake himself to forward the claim for refund to the Income-tax Officer, Non-residents Refund Circle; and in that case should refrain from collecting so much of the tax as is due through direct assessment until he has been informed by the Income-tax Officer, Non-residents Refund Circle, that the refund is passed for payment and has been requested by that officer to adjust it against the direct assessment under section 49-A of the Act. If the assessee does not apply for any refund, the assessing Income-tax Officer should assess him without allowing any adjustment and recover the tax. If the assessee applies for a refund subsequently, the Income-tax Officer, Non-residents Refund Circle, should consult the assessing Income-tax Officer and should not make the refund unless the tax due has already been paid in full or the assessee has expressly asked that it should be set off against the tax due and has paid the balance of the tax due.

See also paragraph 115 as to the time within which arrears of tax due from a non-resident may be recovered.¹

History.—Sub-sections (1) and (2) were introduced in Act VII of 1918. The words “or property” were added by the Act of 1922. Sub-section (3) was added by the Income-tax Amendment Act III of 1928.

¹ I. T. Manual, para. 111.

Business connection, Property.—The words “business connection” and “property” in section 42 (1) are not intended to be repetitions of the expressions “business” and “property” appearing in section 6 of the Act. The word “property” as used in section 42 (1), means something tangible, though it is not confined to immoveable property or to buildings or lands appurtenant thereto. A debt or a mere claim in action cannot be deemed to be property within the meaning of this section.

A non-resident entering into a single monetary transaction by making a loan of his capital to a resident of British India, taking security therefore cannot be said to have business connection in British India, even if the borrower uses the borrowed money in connection with his own business and the repayment of the loan is contemplated to extend over a period of years and the interest is to be paid from time to time during this period. The interest income cannot be deemed to have accrued or arisen in British India at all and is not liable to income-tax.

“If the words ‘accruing or arising to such person whether direct or indirect, through or from any business connection in British India’ are not to be deemed satisfied in every case in which a single monetary transaction by a non-resident with a resident produces gain to the former, it is difficult to see in the facts of this case any distinguishing element of business connection which the legislature has chosen as the test for rendering chargeable to British India income-tax, income which has not accrued in British India. There is no proof that the Nizam is carrying on business of money lending either in Hyderabad or British India. So far as appears he invested some surplus capital in making a loan to the respondent company taking security therefor. That the

respondent company doubtless used the borrowed money in connection with their own business is not a fact which brings the Nizam any nearer to being a person who has a business connection in British India. The circumstance that the repayments of the loan are contemplated to extend over a period of five years, and that the interest would be payable from time to time during this period, is equally ineffective to bring the case within the words of sub-section (1) of section 42.¹

The Rangoon High Court observed as follows:—

“We admit the difficulty arising from the vague expression ‘from any business connection’. Taken in its wide sense, it would render liable to Indian Income-tax any profits made by a manufacturer in England on a single consignment of goods to an importer in India. This is the meaning which the Commissioner of Income-tax seems to have attached to the phrase, and is the meaning which, the learned Government Advocate contends, is the correct one. It is one, however, which we cannot adopt as such a meaning would be repugnant to the word ‘business’ in section 6, as defined by section 2 (4), and we can assign no wider meaning to it than the latter words of the definition as ‘any adventure or concern in the nature of trade, commerce or manufacture.’ It was probably used as Mr. Justice Chatterjee conjectures, as a compendious expression to cover such concern in the nature of trade, commerce or manufacture as arise through a branch, factorship, agency, receivership or management.”

Chatterjee J. said:

“If by the expression ‘business connection’ was meant something different from ‘business’ in section 5, then it would be going beyond the ‘classes of income’ which alone according to section 5 are chargeable to income-tax. Section 6 of Act XI of 1922 uses the word ‘heads’ instead

¹ The Commissioner of Income-tax, Bombay Presidency and Aden v. Curimbhoy Ebrahim & Sons Ltd. (as Agent of H. E. H. The Nizam of Hyderabad, 1935 I. T. L. J. page 492 P. C. ; A. I. R. 1933 Bom. 422 ; 7 I. T. L. J. page 141.

of 'classes'. The former expression seems to have been substituted to make it more comprehensive, we think the same thing was meant by the two expressions 'business' and 'business connection' and for this reason. Even if section 42 (1) be taken as a 'machinery' section, as contended on behalf of the company, the agent cannot be charged with income-tax, nor can the agent be deemed the assessee in respect of the income-tax, unless the principal is chargeable. The principal is chargeable with tax upon income from 'business' and unless the expression 'business' connection in section 42 (1) was used in the same sense as 'business' in section 5, the principal cannot be charged and *a fortiori* the agent cannot be charged with the tax. The section accordingly even as a machinery section would be useless. The English Finance Act (No. 2) of 1915, section 31 (2), uses the words 'through or from any branch factorship, agency, receivership or management,' and the comprehensive expression 'business connection' was probably used in the Indian Act to cover all those words. Then it is pointed out that the word 'property' in section 42 (1) (which was not in the previous Act VII of 1918) indicates that the section could not but be a 'machinery' section. It is contended that the profits of 'property' in British India must accrue or arise in British India, and the fact that the profits of 'property' also shall in some cases be deemed to be profits accruing or arising in British India indicates that the section was merely intended to provide for the method in which the tax was to be realised."¹

Per Mukerji J. :

"This brings us to the next question as to what is meant by 'business connection.' By section 4 of the Act income derived from 'business' is liable to tax. It has been argued that unless the income which is now sought to be charged amounts to income derived from business, it would not be chargeable under section 42 (1), and that section 42 (1) by enacting that profits and gains accruing or arising directly or indirectly through or from business connection with British India professes to make something chargeable, which is not chargeable under section 3 read with section 5. The answer to this argument, however, is that section 5, clause (vi), includes 'income from all other sources' and by section 11

¹ Rogers Pyatt Shellac & Company v. Secretary of State for India, 1 I. T. C. 363.

'income derived from all other sources' includes income and profits of every kind and from every source to which the Act applies, if not included under any of the preceding heads, i.e., (i) to (v). But even if it be argued that 'income derived from all other sources' may not refer to income of this description—a question, with regard to which I do not wish to pronounce any definite opinion—I do not see why profits and gains from business connection should not be included in the general expression 'income derived from business' which is used in section 5. The expression, it must be admitted, is dangerously vague, and it is much to be regretted that in a fiscal enactment a more precise expression has not been used. The meaning, however, does not admit of much doubt; for the context shows that it is such gains or profits as may be calculated to have been made as being that part of the income of the non-resident which is attributed to the connection he has with a business in British India. The word 'business' is one of large and indefinite import and connotes something which occupies attention and labour of a person for the purpose of profit. The word means almost anything which is an occupation or a duty requiring attention as distinguished from sport or pleasure and is used in the sense of an occupation continuously carried on for the purpose of profits.¹ A concern by reason of which one can be said to have connection with such an occupation is business connection."

Act XI of 1922 emphasises the distinction between "income" and "profits or gains" by introducing "profits or gains" in section 4 which is the charging section corresponding to section 3 of Act VII of 1918, and instead of the expression "classes of income" and "income derived from business" in section 5 of the latter Act, speaks of "heads of income, profits and gains" and "business" in section 6. In section 42 of Act XI of 1922 we find the words "business connection or property" in the place of the words "business connection" in the corresponding section 33 (1) of Act VII of 1918. These amendments cast the net wider, by including profits or gains arising or accruing from property as

¹ Smith v. Marine Steam Turbine Co.

well. It is not inconceivable as to show a non-resident can have profits or gains accrued to him through or from property in British India, e.g., if a property in British India is let out or the value of the property in British India is increased and profits or gains accrue or arise to a non-resident, section 42 (1) will bring these profits and gains within the Act, they being deemed to have accrued or arisen within British India. Such profits or gains accrue in British India where the property is situate though they may acquire only a tangible shape where they are actually received. A further amendment in the shape of the introduction of a sub-section, viz, sub-section (2), together with an explanation as to what is or is not to be deemed to be received into British India is also noticeable.¹

In a Bombay case it was held that the word business connection is not limited to a connection in the business, of a resident person which gives rise to a pecuniary interest in the assets of that business.²

The relationship between a company and its shareholders has been held not to be a business connection.³

The definition of the term "business" in section 2 (4) is not exhaustive and does not restrict the meaning of the expression "business connection" in section 42 which is a more comprehensive expression. All that is necessary for section 42 is that there should be a "business" in British India and a connection between a non-resident person or company and that "business," and that the non-resident

¹ 1 I. T. C. 363 at 374. Messrs. Steel Brothers & Co., Ltd. 2 I. T. C. 19.

² A. I. R. 1928 Bom. 448.

³ A. I. R. Bombay 1928, page 465,

person or company has earned an income through such connection.¹

A foreign company lending money in British India and receiving interest thereon makes a profit or gain for the purposes of section 42.² A company which has its head office in America but has a branch office in Calcutta purely for buying purposes, is liable to assessment under this section.³

The Remington Typewriter Co. of New York (America) had branches in India in three places, Calcutta, Madras, and Bombay. The Bombay branch was assessed as agent of the New York company in respect of dividends paid by the Indian companies to the New York company and profits made by the American company on the sale of its typewriters to the other three companies. By an agreement, the Bombay branch of the company had bought the good-will of the American company in respect of certain territory. Held by the Privy Council that the Remington Typewriter Co. (Bombay) Ltd. was and could be held to be the agent of the New York company under section 43 and that, although no contractual obligation existed by which the Bombay company was compelled to purchase any of the manufactures of the American company, the flow of business between the two companies was secured by the fact that the ultimate and complete control of the Bombay company was vested in the American company, which owned all its shares and that for these reasons business connection existed between the new

¹ The National Mutual Association of Australia Ltd. v. Commissioner of Income-tax, Bombay, 7 I. T. L. J. page 129, 6 I. T. C. 426.

² A. I. R. 1930, page 54 P. C.

³ A. I. R. 1925 Cal. 34.

companies, that as such the profits and gains accrued or arose to the American company directly or indirectly through or from a business connection in British India, that, as such, such profits or gains were chargeable to income-tax and super-tax under section 42 (1) of the Act, and that super-tax charged upon dividends received by the American company from the three Indian companies at Calcutta, Madras and Bombay could be charged against and collected from the Bombay company as agent of the New York company, under the said section and that the Bombay company could be held to be the agent of the New York company.¹

The Remington Typewriter Co. of New York in America (the American company) formed three limited companies in India, at Bombay (the Bombay company), Madras and Calcutta.

In 1921, the Bombay company, under an agreement with the American company took over the latter's entire business of purchase and sale and its good-will in consideration of 6 lacs fully paid up shares of the Bombay company which were thence-forward held by the American company. The American company received dividends on the shares of the Bombay company. The Bombay company was assessed to tax on dividends and 5 per cent. manufacturer's profits as agent of the American company in respect of goods sold by the American company to the Bombay company from time to time under section 43 and also to super-tax as such, in respect of the dividends payable to the American company in respect of its holdings in Madras and Calcutta companies.

¹ The Commissioner of Income-tax, Bombay v. The Remington Typewriter Co. Ltd., 5 I. T. C., P. C.

Held, the Bombay company did have business connection with the American company within the meaning of section 43, but that, though an agent, the Bombay company could not be assessed to income-tax or super-tax under section 42 (1) of the Act or otherwise, in respect of any profits made by the American company on the sale of its goods to the Bombay company inasmuch as the Bombay company was not in receipt on behalf of the American company, of the profits in question as is requisite under section 40, that similarly the Bombay company was not liable to be assessed to super-tax upon dividends paid to the American company by the Calcutta company or the Madras company nor upon dividends of its own shares paid by it, to the American company and that the super-tax upon dividends in the Bombay company can be recovered by deduction by the Principal Officer of the Bombay company under sections 57 and 58 of the Act.

Where the assessee was served with a notice under section 42 to show cause by a particular date why he should not be treated as agent of the persons residing outside British India to whom payment of the interest amounting to large sums had, according to his return, been made it was held, that this does not preclude the Income-tax Officer from treating the sum in question as his income, on which he could be assessed.¹

The Bombay Trust Corporation, a company in Bombay, had money dealings with a company in Hong Kong, called the Hong Kong Trusts Corporation, which used to lend money to the Bombay company.

¹ Nopechand Mangiram v. The Commissioner of Income-tax, Behar and Orissa, 2 I. T. C., 146.

The latter used to remit sums as interest to the Hong Kong company. On the Bombay company being served with notice under section 43 for assessment as agent of the Hong Kong company, as to the sum of interest remitted by them, and having been assessed to tax and super-tax.

Held, that the interest in question was profit or gain accruing or arising to the Hong Kong company, residing out of British India, from its business connections, in British India, and was, therefore, assessable, the Hong Kong company being in receipt of the 'income' 'through' the Bombay company.

The Bombay Trust Corporation operating in Bombay had dealing with the Hong Kong Trusts Corporation operating in Hong Kong as a finance corporation.

In 1926, the Commissioner of Income-tax, Bombay, gave notice to the Bombay Trust Corporation that he proposed to treat them as statutory agents of Hong Kong Trusts Corporation for purpose of section 42 of the Act. At that time, the latter had advanced something like 15 crores to the Bombay Trust Corporation, apparently on no security but on the terms of a loan on deposit carrying interest at 5½ per cent. Assessment was duly made and, on the matter going up to Privy Council, it was held that business relations between the two companies existed and that the Bombay Corporation may be treated as the statutory agent of Hong Kong Trusts Corporation. On facts it was proved by declaration that since October, 1926, shortly after the notice above mentioned, the loan was paid off by E. D. Sassoon & Co. of Shanghai and that they, and not the Hong Kong Corporation, received interest from the Bombay Corporation.

Held, that there was no evidence to justify the finding that for the year of assessment profits and gains accrued or

arose to the Hong Kong Trusts Corporation through its business connections with the Bombay Corporation and that hence the Hong Kong Trusts Corporation or the Bombay Trust Corporation as their statutory agents were not assessable.¹

The word agent used in section 42 (1) means the agent in receipt of income on behalf of the non-resident arising from business relationship.² No express appointment is necessary and the relationship has to be gathered from facts of each case.³

No deduction can be claimed in respect of the portion of profit earned in foreign country in case of assessment under section 42 on sales in British India of goods manufactured in a foreign country.

An assessee assessed under section 42 in respect of a business in which the manufacture of a commodity takes place in a foreign country and the sale thereof takes place in British India, is not entitled in computing the profits and gains of such business, to make a deduction representing the proportion of the profits earned by manufacture in the country of origin.⁴

Non-resident agent of a non-resident principal. Liability to assessment.—A non-resident agent of a non-resident

¹ The Bombay Trust Corporation as agent of Hong Kong Trusts Corporation v. The Commissioner of Income-tax, Bombay, 3 I. T. C., 135.

² A. I. R. 1928 Bom. 466.

³ A. I. R. 1933 Bom. 437.

⁴ The Port Said Salt Association Ltd. v. Commissioner of Income-tax, Bengal, 7 I. T. L. J. page 151; 6 I. T. C. 123.

principal can be assessed on behalf of a non-resident principal. The facts were as follows :—

“Messrs. Michelin & Co. are a French Firm of Tyre Manufactures who sell tyres to the tradesmen in Travancore. Messrs. Parry & Co. were their warehousemen who issued the tyres, received the price and maintained accounts in the name of Messrs. M Michelin & Co. The cash book maintained by them was found to contain debits for the amounts received from the several customers and credits for the expenditure met by Messrs. Parry & Co., on behalf of Messrs. Michelin & Co. such as legal expenses for recovery of trade debts and the amounts remitted to the Chartered Bank or the Imperial Bank of India to the credit of Messrs. Michelin & Co. There were columns in the cash book for the invoice number, amount of the invoice, amount received, folio, personal ledger, etc., so that, according to the cash book, Messrs. Parry & Co. maintain Messrs. M. Michelin & Co.'s customer's accounts, collect money on account of the latter and are solely responsible for the conduct of their business.

“Messrs. M. Michelin & Co. have their own travelling representatives who move about interviewing businessmen in Travancore and entering into contracts for the supply of tyres of the required kinds and at the stipulated prices. Occasionally, orders are also placed direct with Messrs. Parry & Co. The goods are sent from Madras by train and the Railway receipts are sometimes sent by V. P. P. and at other times through the Imperial Bank of India. In the latter case, the Railway receipts are obtained either on immediate payment or on acceptance. If the receipts are obtained on acceptance the money is sometimes paid into the Bank and at other times sent to

Messrs. Parry & Co., Ltd., Madras, by cheque or by money order.¹

Principal liable to assessment when there is no agent.—In the case of a non-resident, income which neither accrues, nor arises, nor is received, within British India, may be liable to tax under the combined operation of sections 3, 4 and 42, Income tax Act. If a non-resident company earns any profits or gains, directly or indirectly, even though the same accrue or arise outside India, provided they are earned or derived through or from a business connection or property in British India, then for the purposes of the Act such profits or gains are deemed to be within the meaning of section 42 of the Act. Accordingly, where a non-resident company carries on insurance business in India and issues policies in respect of which it earns premiums and such premiums or the accumulations thereof are sent out being invested outside British India, the interest earned thereon, though earned outside, can be said to be profits arising, if not directly, at least indirectly, through a business connection in India and such profits earned on premium income from participating policies are chargeable to income-tax under the Act.

A principal is liable to assessment under section 42 without an agent being appointed under section 43.²

Difference between Law in India and United Kingdom.—Under the English Income-tax Acts, only the profits that arise from the exercise of trade in United Kingdom are

¹ Parry & Co. v. Commissioner of Income-tax, Travancore, 1935 I. T. L. J. page 182.

² The National Mutual Association of Australia Ltd. v. Commissioner of Income-tax, Bombay, 7 I. T. L. J. page 129.

liable to be taxed. No such reservation is to be found in the Indian Income-tax Act.

It will be seen that under the English Acts, it is essential that the profits should arise from the exercise of the trade within the United Kingdom. In the Indian Acts (VII of 1918 and XI of 1922), however, 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 in British India shall be deemed to be income accruing or arising within British India. There is no such provision in the English Acts, and that distinguishes the English Acts and the cases decided thereunder from the Indian Acts.

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 :

P. 111.
Agents to include persons treated as such.

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.

Sections 42 and 43 are to be read jointly.¹

It would appear that the term agent is used in the same sense in sections 40 and 42, i.e., a person who is in receipt of profits and gains. The word agent in section 42 is overridden

as regards its meaning by section 43, and only applies to agents in receipt of profits and gains.¹ The word agent in section 42 is not confined to agents in receipt of profits or gains.²

Section 43 makes any person (1) who is employed by or on behalf of a person residing out of British India, (2) having any business connection with such person, (3) any person through whom any foreign resident is in receipt of any income, profit, is an agent of the foreign resident, if the Income-tax Officer has after service on him of a notice of his intention to do so, treated him as such agent. Any person coming within the above terms is liable to be treated as agent and assessed as such.³ The word "through" in this section, however, does not mean "from" and a person does not become an agent simply because he has to transmit money to a non-resident. A mere debtor who has to remit interest to a person creditor does not therefore come within the third category of agents enumerated in this section.⁴

Proviso.—The proviso governs the whole section, and the issue of a notice to a person as agent is not competent until an order has been passed declaring him to be the agent of a non-resident person under section 43. A notice under

¹ Commissioner of Income-tax, Bombay v. Bombay Trust Corporation, A. I. R. 1928 Bom. 448; 3 I. T. C. 133; Remington Typewriter Co., 3 I. T. C. 166.

² Commissioner of Income-tax, Bombay v. Bombay Trust Corporation, 1930 A. L. J. 78 P. C. A. I. R. 1930 P. C. 68.

³ A. I. R. 1931 P. C. 422; The Commissioner of I. T. Bombay v. The Bombay Trust Corporation Ltd., 4 I. T. C. 313 P. C.

⁴ Currimbhoy Ebrahim & Sons, A. I. R. 1928 Bom. 448; 7 I. T. L. J. page 141; Hong Kong Trust Corporation Ltd. v. Commissioner of I. T., Bombay, 3 I. T. C. 135.

section 22 (1) issued against any such person who has not been declared to be agent is invalid. Proceedings under section 34 taken a year after the end of the year of assessment are time-barred, and it will be of no avail to the Income-tax authorities that prior to the issue of a notice under section 43, notices had been served on the person concerned.¹ It would thus appear that before proceeding against any person as agent of a foreigner, proceedings under the proviso must be taken.

Appeal.—Under section 30 (1) an appeal lies from an order of the Income-tax Officer treating a person as an agent of a foreigner.²

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

P. 96.

Liability in case of a discontinued firm or partnership.

Chapter V-A

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING

44-A. The provision 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

P. 114.

Liability to tax of occasional shipping.

¹ *Newal Kishore Khairati Lal v. Commissioner of Income-tax, Punjab*, 1934 I. T. L. J. 207; A. I. R. 1930 Lahore 1014.

² *In re Newal Kishore*, A. I. R. 1930 Lahore 1014 above; *In re Gokul Das Chundi Lal*, A. I. R. Mad. 1932 page 152.

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.

44-B. (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.

44-C. 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.

Adjustment

British Shipping Companies—Assessment of.—When assessing British Shipping Companies, the Income-tax Officers should accept a certificate granted by the Chief Inspector of Taxes in the United Kingdom stating (1) the ratio of the profits of any accounting period as computed for the purposes of the United Kingdom income-tax computed without making any allowance for wear and tear to the gross earnings of the Company's whole fleet and the ratio of the United Kingdom allowance for wear and tear to the gross earnings of the whole fleet, or (2) the fact that there were no such profits. The expression 'gross earnings of the Company's whole fleet' means the total receipts of the Shipping Company, excepting only receipts from non-trading sources, such as income from investments. The following instructions should be observed where British Shipping Companies correspond direct with Income-tax Officers and not through an Agent in British India :—

1. Where a British Shipping Company which corresponds direct with an Income-tax Officer, is unable to furnish its return of income by the prescribed date, it will obtain an extension of time from the Income-tax Officer; but every effort should be made to file the return as early as possible.
2. The Income-tax Officer will make the assessment as soon as possible after receiving the return and in any case within one month.

3. The notice of demand will be issued on the shipping company's agent in accordance with the provisions of the Income-tax Act and a copy of the assessment order will be sent to the company direct. The company will arrange with its agent for the despatch to it of the notice of demand.
4. Provided that the notice of demand can be issued on or before January 15th, the period allowed for payment will be sixty days. If the demand is made after January 15th the period will be shorter.
5. For the purpose of sub-section (2) of section 30 of the Indian Income-tax Act, 1922, the Assistant Commissioner will regard it as a proper extension of time to allow the shipping company to file an appeal up to the date on which a reply could be received from England if that reply were despatched by the mail in the week following that in which the notice of demand and the copy of the assessment order reached, or could be presumed to have reached, the company.
6. The demand must be met within due date unless the Income-tax Officer agrees to give the agent further time for payment. But in any case the demand must be paid before the end of the financial year. If a demand has been paid before the decision of an appeal where one has been filed and the appeal results in a reduction of the assessment, a refund will promptly be granted in the ordinary course.¹

Occasional shipping.—(Tramp steamers, etc.)—Only one person can be taxed under Chapter V-A in respect of a particular ship taking up passengers, live-stock or goods at ports in British India, and that person is the "principal" within the meaning of section 44-A. Such principal may be either the owner or the charterer of the ship. It will be a question of fact in each case in which the ship has been chartered by the owner to another person whether the owner or the charterer is the principal.

Chapter V-A is only appreciable where the principal :—(1) carries on business in British India as the owner or charterer of a ship,

¹ I. T. Manual, para 113.

(2) does not reside in British India, and (3) does not employ an agent from whom the tax would be recoverable under section 42. Where there is no charterer the owner will be the principal. Where there is a charterer it will be a question of fact whether he or the owner is the principal. The business of which the profits are to be calculated and assessed for income-tax under Chapter V-A is the business of carrying passengers, live stock or goods shipped at ports in British India, and the person to be taxed is the person (referred in chapter V-A as the 'principal') who carries on that business, but does not reside in British India, and does not employ any agent from whom the tax would be recoverable under section 42. The criterion to be applied is, "who is the person to whom or on whose behalf money is paid or payable on account of carriage of passengers, live-stock or goods from a port in British India?"

Generally speaking, where there is what is known as a 'Time Charter' under which the owners may be said to let the ship out to the charterer for a fixed sum for a certain period, during which the owners retain no further control over the vessel or her movements, the owners cannot be held to be carrying on business in British India, or even to have a 'business connection' in British India, and are therefore not liable to Indian income-tax either under Chapter V-A or under section 42.

Where, however, the ship has been chartered under what is known as a 'Voyage' or 'Trip' Charter the position is different. Under this kind of charter party, the charterers are practically in the position of brokers, who guarantee to secure a certain quantity of cargo for the owners at certain rates of freight. If the full amount of freight cannot be secured, the charterers are liable to make good the deficiency. Any such deficiency is to be paid by the charterers to the Master, on behalf of the owners, in cash, minus a certain percentage, at the time and place of loading in India. Similarly, if freight is secured in excess of that stipulated, the Master of the ship is to pay such excess to the Charterers, at the time and place of loading, by demand draft on the owners on London. The Bills of Lading are signed by the Master on behalf of the owners; and the cargo as soon as shipped is therefore in the constructive possession of the owners; and at their risk. The ship is usually consigned to the Charterers or their agents, who look after its interests when in port, and for doing so are paid a commission by the owners. The owners also pay brokerage. In such a case, the owners are

carrying on business in British India through their agent, the Master, who receives cargo on their behalf, and receives and makes payments on their account in British India, and thus the owners having no regular or permanent agent in British India are liable to tax under Chapter V-A on the profits of the business conducted by the Master on their behalf.

If a ship has arrived in a British Indian port, either on owner's account or under a charter and the non-resident owner, or the non-resident charterer, causes the ship to be chartered, or transfers the existing charter, or effects a sub-charter of the vessel, as the case may be, such a transaction, though it does constitute the carrying on of business in British India by the non resident, does not of itself amount to carrying on business within British India as the owner or charterer of a ship within the meaning of Chapter V-A. But if the ship is loaded in any British Indian port the question whether the non-resident owner or the non-resident charterer is assessable to income-tax under Chapter V-A must be decided on the principles stated above. Whoever of these two persons causes the ship to be loaded with cargo, and is paid the freight for carrying such cargo, is the person who carries on business within the meaning of section 44-A.¹

Chapter VI

RECOVERY OF TAX AND PENALTIES

45. Any amount specified as payable in a notice of demand under sub-section (4) of section 23-A 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

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Tax when payable.

¹ I. T. Manual, para 114.

assessee has presented an appeal under section 30 or under section 33-A, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

History.—The words “under sub-section (4) or section 23-A” and “or under section 33-A” were added by the Income-tax Amendment Act XXI of 1930.

Default.—Default in its largest and most general sense means “failing”. “Default is a purely relative term like negligence. It means nothing more, nothing less, than not doing what is reasonable under the circumstances—not doing something which you ought to do having regard to relations which you occupy towards the other persons interested in the transaction.”¹

In section 45 failure to pay within time and at the place and to the person makes the person responsible for such payment, in default. It is immaterial whether the default is wilful or due to some causes beyond the control of the person in default.²

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.

P. 116.

Mode and time of recovery.

(1-A) For the purposes of sub section (1) the Income-tax Officer may direct the recovery of any sum less than

¹ Per Bowen L. J. *in re* Young and Harston, 31 Ch. D. 174, and Collins L. J. *in re* Woods & Lewis, 2 Ch. 211, Stroud.

² *In re* Woods & Lewis, Ch. 211.

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 of 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
P. 115. 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 sums so deducted to the credit of the Government of India, or as the Central Board of Revenue directs.

(6) The Local Government may direct with respect to any specified area, 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-
P. 115. 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.

History.—Para 1-A was inserted by the Income-tax Amendment Act III of 1928.

The proviso was added by the Income-tax Amendment Act XVIII of 1933.

Method of the recovery of the tax.—The Income-tax Officer is responsible for the recovery of the tax whether the demand represents the tax assessed by himself under section 23 or sub-section (4) of section 23-A or whether it represents an enhancement made by the Assistant Commissioner on appeal under section 31 or by the Commissioner in exercise of his powers of review under section 33. Notices of demand under section 29 or under clause (iii) of sub-section (4) of section 23-A in

the form prescribed in rule 20 should be issued at as early a date as possible after the assessment is made under section 23 or sub-section (4) of section 23-A or when intimation is received of orders of enhancement from superior authorities in order that the tax may be promptly collected. The fact that an appeal has been lodged against an assessment should not stop the collection although the Income-tax Officer is empowered, under section 45, in his discretion to treat an assessee as not being in default until an appeal is disposed of. When the Income-tax Officer considers that an appeal is a bonafide appeal, he should in exercise of his discretion under section 45 postpone the collection of the disputed portion of the tax, requiring the assessee to pay only the portion of the tax that is not in dispute as the collection thereof cannot be delayed. Similarly section 66 (7) of the Act provides that a reference to the High Court shall in no way stop the collection of the tax.

When the tax is not paid within the time prescribed in the notice, or, if no such time is prescribed, by the first day of the second month following the date of the service of the notice or order, the Income-tax Officer should use the powers conferred upon him by sub-sections (1) and (1-A) of section 45 and impose a penalty for the default. A penalty can be imposed under section 46 (1) on the person who is responsible for deduction of tax under section 18 and who by failing to discharge this responsibility has become liable to be treated as a defaulter under section 18 (7) of the Act.

Section 46 (3) and (4) provide for cases where a special whole time income-tax staff for the actual collection of the tax is employed, in any area. Where such a staff is employed, the Commissioner of Income-tax may confer upon that staff any of the powers for the enforcement of any process for the recovery of a municipal tax or local rate imposed under any enactment which is in force in any part of the province, e.g., the powers of the distraint, if the Income-tax Officer is satisfied that the failure to deduct tax was wilful. In other areas and, in the areas in which a special staff is employed where the powers for the recovery of municipal taxes or local rates have proved insufficient, the Income-tax Officer may, under section 46 (2), forward under his signature a certificate specifying the amount of arrears due from an assessee to the Collector of the district and the Collector of the district on receipt of such a certificate must proceed to recover the amount specified in the certificate as if it were an arrear of land revenue. The

Collector has, without prejudice to any other power he may have, the power to attach and sell a debt due to a defaulter to recover the arrears.

Where the defaulter is a salaried person the Income-tax Officer may, under the provisions of section 46 (5) require the person paying "salary" to such assessee to deduct from any subsequent payments of "salary" any arrears of tax due from such assessee whether those arrears are due on account of tax on "salary" or on income from any other sources or on account of any penalty.

The necessity of prompt collection of the tax should be impressed upon Income-tax Officers, since not only is delay in the collection of this tax likely to result in loss of revenue for other reasons, but, under the provisions of section 45 (7), no proceedings for recovery can be commenced after the expiration of one year from the last day of the year in which the demand is made, with the exception of the special case referred to in sub-section (1) of section 42. That sub-section refers specially to arrears of tax due from a non-resident. For the collection of such arrears no time limit is prescribed, as such arrears may be recovered from any assets of the non-resident which may at any time come within British India.

The phrase "proceedings for the recovery of any sum payable under this Act" should be interpreted as relating to proceedings taken under section 46. The issue of a notice of demand is not a proceeding for the purpose of this section.

The above remarks regarding recovery of tax apply also, under the provisions of section 47 to the recovery of any penalty imposed under section 25 (2), section 28 or sub-section (1) and (1-A) of section 46.¹

In his discretion.—It rests with Income-tax Officer alone to impose a penalty. He is also the sole judge of the amount of such penalty. Sub-clause 1-A authorizes the Income-tax Officer to impose a progressive penalty in case of continuing default.

¹ I. T. Manual, para 115.

Arrears of Land Revenue.—The Collector is authorized only to recover the Income-tax as arrears of land revenue. The procedure applicable to arrears of land revenue alone is made applicable. The income-tax does not acquire other characteristics of land revenue. Consequently, the rule that a purchaser in a sale under the Revenue Recovery Act would obtain a preferential title free from all encumbrances applies only when the sale is for land revenue and not for the recovery of other dues such as income-tax. A purchaser in default of income takes subject to all encumbrances, charges and liens.¹

Execution of distress warrant by a Police Officer.—Section 46 describes the mode of recovering income-tax. The Collector may, on receipt of a certificate from the Income-tax Officer, recover the amount specified therein as if it were an arrear of land revenue; but in areas notified by the Commissioner arrear demands may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rates.....But even supposing that a distress warrant could be legally issued the Collector had no authority to issue it to an officer of the Police and the Police Officer executing such warrant could not be said to be acting in execution of his duty as a Police Officer.²

Procedure for recovery of land revenue.—The land revenue laws of the various provinces have made provision

¹ *In re Mathu Kirishna Ayar*, 25 Mad. 230; *Sankarm Nambudripad v. Ramaswami Ayar*, 41 Mad. 691 at 698; *Chima Mal Achi v. Saithakkathi Rewiter*, 1935 I. T. L. J. page 308.

² *Jayram Shahu and other v. King-Emperor*, A. I. R. 1932 Pat. 111.

for the recovery of land revenue. U. P. Act III of 1901 makes the following provision :—

146. An arrear of revenue may be recovered by one or more of the following processes :—
Process for recovery of revenue.

- (a) by serving a writ of demand or a citation to appear on any of the defaulters;
- (b) by arrest and detention of his person;
- (c) by attachment and sale of his moveable property;
- (d) by attachment of the specific area, share, patti or mahal in respect of which the arrear is due;
- (e) by transfer of such share or patti to a solvent co-sharer in the mahal;
- (f) by annulment of the settlement of such patti or of the whole mahal;
- (g) by sale of such specific area or patti or of the whole mahal;
- (h) by sale of other immovable property of the defaulter.

See paragraphs 35 to 44 of U. P. Revenue Manual.

147. When an arrear of revenue becomes due, a writ of demand calling on the defaulter to pay the amount within a time therein stated, or a citation to appear may issue.
Writ of demand and citation to appear.

See paragraphs 45 to 49 of the Revenue Manual.

Service of citation is also governed by the provisions of sections 195 and 196, *infra*.

Citation to appear is called 'talbi-nama.' It means a direction to appear.¹ A citation issued to a person in arrear of Government Revenue under section 147 is not summons and person failing to attend is not guilty under section 147 I. P. C.²

¹ 1928 Oudh 122 ; 40 W. N. 1211.

² 1930 All. 265; 52 All. 568 ; 1930 A. L. J. 354; 1927 All. 49; 49 All. 215 A. L. J. 39; 1928 All. 680; 26 A. L. J. 1201 *contra*. 1928 Oudh 122; 4 O. W. N. 12 ; 1927 All. 122 ; 24 A. L. J. 1001 ; 49 All. 205,

148. The defaulter may be arrested and detained in custody for fifteen days, unless the arrear and the costs of arrest and detention are sooner paid;

Arrest and detention.

Provided that no taluqdar, no person exempted from personal attendance in the Civil Courts, and no female shall be subject to arrest or detention in custody under this section.

See paragraphs 50 to 54 of Revenue Manual.

149. The Collector may, whether the defaulter has been arrested or not, attach and sell his movable property.

Attachment and sale of movable property.

Every attachment and sale ordered under this section shall be made according to the law in force for the time being for the attachment and sale of movable property under the decree of a Civil Court. In addition to the particulars mentioned in clauses (a) to (n) of section 266 (new sec. 60) of the Code of Civil Procedure, articles set aside exclusively for the use of religious endowments shall be exempt from attachment and sale under this section. The costs of the attachment and sale shall be added to the arrear of revenue, and shall be recoverable by the same procedure.

See paragraphs 55 to 60 of Revenue Manual.

Collector—An Assistant Collector in charge of a sub-division, shall, as such, have the powers to attach and sell movable property under section 149. See also para 38 of Revenue Manual.

150. The Collector may, in addition to, or instead of, any of the other processes hereinbefore specified attach, and take under his own management, any specific area, share, patti or mahal in respect of which an arrear is due; but no land shall be held under attachment for the same arrear for a term exceeding three years from the first day of July next following the attachment:

Attachment of land.

Provided that if the arrear is sooner liquidated, the land shall be released and the surplus receipts (if any) made over to the defaulter or his legal representative.

See paragraphs 61 to 65 of Revenue Manual. Only the Collector cannot issue process under this section. See paragraph 39 of the Revenue Manual.

152. When the arrear is due in respect of a share or patti of a mahal, the Collector may, in addition to, or instead of any of the processes hereinbefore specified with the previous sanction of the Commissioner, transfer such share or patti for a term not exceeding fifteen years from the first day of July next after the date of sanction, to all or any of the co-sharers of the mahal other than the proprietors of such share or patti on condition of their paying the arrear, and on such terms, as the Commissioner in each case may prescribe. Such transfer shall not affect the joint and several liability of the co-sharers of the mahal in which it is enforced.

Transfer of defaulter's share.

When the term of transfer has expired, the share or patti shall be restored to the proprietors thereof free of any claim on the part of Government or the transferee for any arrear in respect of such share or patti.

See paragraphs 66 to 69 of the Revenue Manual.

153. When the Collector is of opinion that the processes hereinbefore specified are not sufficient for the recovery of such arrear, he may, in addition to, or instead of all or any of such processes, report the matter and the Local Government may thereupon order the existing settlement of the patti or mahal in respect of which the arrear is due to be annulled.

When settlement may be annulled.

The provisions of this section shall not be put in force for the recovery of any arrear of revenue which may have accrued on land

- (a) while under attachment,
- (b) while under the charge of the Court of Wards, or
- (c) which is permanently settled.

160. When the Collector is of opinion that the other processes hereinbefore specified are not sufficient for the recovery of an arrear, he may, in addition to, or instead of, all or any of such other processes, with the previous sanction of the Local Government, sell by auction the specific area, patti or mahal in respect of which such arrear is due :

Sale of defaulter's specific area, patti or mahal.

Provided that no specific area, patti or mahal shall be sold for any arrear which may have accrued while it was—

- (a) under the management of the Court of Wards,
- (b) under direct management by the Collector, or
- (c) in farm under the provisions of this Act.

Taquair is revenue and for arrears of *taquair* land should be sold free from all incumbrances.¹

See paragraphs 80 to 92 and 60 to 63 of the Revenue Manual.

162. (1) If an arrear cannot be recovered by any of the above processes and the defaulter owns, or is in possession of any other mahal, or any share in any other mahal, or any other immovable property, the Collector may proceed against such mahal, or share, or other immovable property as if it were the land on account of which the revenue is due, under the provisions of this Act :

Power to proceed against interest of defaulter in property other than that in respect of which default is made.

Provided that no interests save those of the defaulter alone shall be affected by such process, and when such property is sold, the provisions of section 161 shall not apply to such sale.

Sums of money recoverable as arrears of revenue, but not due in respect of any specific land, may be recovered by process under this section against any immovable property of the defaulter.

Analogous provisions are to be found in the Revenue Laws of other provinces. It would appear that the sections would not apply *mutatis mutandis* to proceedings for the recovery of income-tax. The point is that the Collector has got all the powers to adopt measures to enforce payment of income-tax as he has to enforce payment of land revenue.

Powers of a Civil Court.—Over and above the powers conferred on the Collector to enforce payment of income-tax in the manner provided for the recovery of land revenue, the Collector has been armed with the powers of a Civil Court so

¹ 66 I. C. 620.

far as it relates to attachment and sale of debts due to a judgment-debtor. The powers and procedure of a Civil Court in this respect is as follows :—

ATTACHMENT.

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory-notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Order 21, Rule 46. (1) In the case of :—

Attachment of debt, share and other property not in possession of judgment-debtor.	(a) a debt not secured by a negotiable instrument, (b) a share in the capital of corporation, (c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of any Court, the attachment shall be made by a written order prohibiting,—
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- (i) in the case of the debt, the creditor from recovering the debt, and the debtor from making payment thereof until the further order of the Court ;
- (ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;
- (iii) in the case of other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house and another copy shall be sent in the case of the debt,

to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Order 21, Rule 51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of the public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Attachment of negotiable instrument.

Order 21, Rule 52. Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued.

Attachment of property in custody of court or public officer.

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Order 21, Rule 53. (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

Attachment of decrees.

(a) if the decrees were passed by the same Court, then by order of such Court, and,

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court (In Allahabad and Oudh add 'and to any other Court to which the decree has been transferred for execution') of a notice to be executed, requesting such other Court to stay the execution of its decree unless and until—

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court (In Allahabad and Oudh add 'and to any other Court to which the decree has been transferred for execution') a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached, and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

Order 21, Rule 64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Power to order property attached to be sold and proceeds to be paid to person entitled.

Order 21, Rule 65. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Sale by whom conducted and how made.

Order 21, Rule 76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Negotiable instruments and shares in corporations.

GARNISHEE ORDERS.

Order 21, Rule 131. The Court may, in the case of any debt due to the judgment-debtor (other than a debt secured by a mortgage or a charge or a negotiable instrument, or a debt recoverable only in a revenue Court) or any movable property not in the possession of the judgment-debtor, issue a notice to any person (hereinafter called the garnishee) liable to pay such debt, or to deliver or account for such movable property, calling upon him to appear before the Court and show cause why he should not pay or deliver into court the debt due from or the property deliverable by him to such judgment-debtor, or so much thereof as may be sufficient to satisfy the decree and the cost of execution.

Added by Allahabad.

Order 21, Rule 133. If the garnishee disputes his liability the court, instead of making such order, may order that any issue or question necessary for determining his liability be tried as though it were an issue in a suit; and upon the determination of such issue shall pass such order upon the notice as shall be just.

Added by Allahabad.

Order 21, Rule 134. Whenever in any proceedings under these rules it is alleged, or appears to the court to be probable that the debt or property attached or sought to be attached, belongs to some third person or that any third person has a lien or charge upon, or an interest in it, the court may order such third person to appear and state the nature of his claim, if any, upon such debt or property and prove the same, if necessary.

Added by Allahabad.

A debt includes both secured and unsecured debts.

The various Municipalities and District Boards Acts make provisions for the recovery of their taxes and dues by distraint and attachment of property, and various other measures for which provision is made in the Acts.¹

Appeal.—There is no appeal against the order of an Income-tax Officer imposing a penalty under this section.

Liability of the Estate of a deceased person.—The estate of a deceased person in the hands of his executor, administrator or other legal representative is now liable to tax under section 24 B added by the Income-tax Amendment Act XVIII of 1933. Rulings to the contrary are no longer good law.²

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.

P. 115.

Recovery of penalties.

¹ See sections 166 to 173 of U. P. Municipalities Act II of 1916 and sections 133 to 140 of U. P. District Boards Act.

² See *Commissioner of Income-tax v. Ellis C. Reid*, A. I. R. 1931 Bombay 333.

Chapter VII

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 Governor-General in Council 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 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 Governor-General in Council 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.

P. 11, 82, 116.

R. 36, 37, 38, 39.

Refunds.

P. 10, 11, 71, 94,
116.

Order 21, Rule 134. Whenever in any proceedings under these rules it is alleged, or appears to the court to be probable that the debt or property attached or sought to be attached, belongs to some third person or that any third person has a lien or charge upon, or an interest in it, the court may order such third person to appear and state the nature of his claim, if any, upon such debt or property and prove the same, if necessary.

A debt includes both secured and unsecured debts.

The various Municipalities and District Boards Acts make provisions for the recovery of their taxes and dues by distraint and attachment of property, and various other measures for which provision is made in the Acts.¹

Appeal.—There is no appeal against the order of an Income-tax Officer imposing a penalty under this section.

Liability of the Estate of a deceased person.—The estate of a deceased person in the hands of his executor, administrator or other legal representative is now liable to tax under section 24 B added by the Income-tax Amendment Act XVIII of 1933. Rulings to the contrary are no longer good law.²

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.

¹ See sections 166 to 173 of U. P. Municipalities Act II of 1916 and sections 133 to 140 of U. P. District Boards Act.

² See Commissioner of Income-tax v. Ellis C. Reid, A. I. R. 1931 Bombay 333.

Chapter VII

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 Governor-General in Council 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 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 Governor-General in Council 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.

P. 11, 82, 116.

R. 36, 37, 58, 39.

Refunds.

P. 10, 11, 71, 94,
116.

(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 Governor-General in Council 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

(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

History.—The word "or other.....behalf" in sub-section (1) were added by Income-tax Amendment Act XXII of 1930, and the words "or at.....may be" in sub-section (1) by the Income-tax (Second Amendment) Act

XVIII of 1933. The words "or any.....firm" and the words "or that.....income-tax" and the words "or at the rate.....may be" were added in sub-section (2) by the Income-tax Amendment Act XVIII of 1933, and the words "or other authoritybehalf" were added by the Income-tax (Second Amendment) Act XXII of 1930. The words "or other authority..... behalf" in sub-section (3) were added by Act XXII of 1930 and the words "or that his total.....income tax" were added by Act XVIII of 1930.

Sub-clauses (4) and (5) were added by the Income-tax Amendment Act III of 1928.

Taxation of a firm.—For the difference between a registered and unregistered firm, see paragraph 10.

While income-tax is leviable on the profits of a registered firm at the maximum rate (see Finance Act), and while under section 43 (2) a member of a registered firm is entitled to get a refund both in cases where the income of the member is below the minimum chargeable with income-tax, and in cases where the maximum rate is greater than the rate applicable to his total income, it is desirable that, so far as possible, such refunds should be avoided.

The question of refund does not arise if the personal income of none of the partners liable to Indian Income-tax including his share in the Firm (whether he be resident or non-resident) is less than Rs. one lakh. In other cases, if each of the non-resident partners is a British subject or a subject of an Indian State and produces with his individual return of income adequate evidence of the amount of his foreign income that is to be taken into account in determining his claim to a refund, and all the resident partners (if any) file returns of their individual incomes, the Income-tax Officer, on being satisfied that the whole of the profits of the registered firm are accounted for in these personal statements, should charge the partners direct at the rate appropriate to their total income.

In view of sub-section 5 of section 48, this procedure cannot be applied to the following cases :—

- (1) Firms in which one partner at least is a non-resident foreign subject (other than a subject of an Indian State) to whom no refund can be due in any case.
- (2) Firms in which one partner at least is a non-resident British subject or subject of an Indian State to whom a refund may or may not be due—that is, who has not yet produced adequate evidence as to the amount of his foreign income.
- (3) Firms in which in addition to non-resident partners there is any resident partner who has not filed a return of his total income.

The demand notice in respect of the profits of such firms must be addressed to the firm, and no individual assessments should be made on, or demand notices issued to the partners in respect of their shares of the profits of the firm. The position will be just as though the firm were an unregistered firm. If a partner has other income he will be assessed on that, separately, and of course his total income will include his share of the profits of the firm. The share due by each partner of the income-tax on the profits of the firm should be intimated to him informally, with an indication that this is done merely as a matter of convenience and does not affect the liability of the firm as such for the income-tax on the whole of its profits. Separate assessments on partners will also have to be made for super-tax, if necessary.

For the method of setting-off a loss of profits of a registered firm against other income of a partner see paragraph 94.

In computing the total income of a member of a registered firm or unregistered firm for the purposes of income-tax or super-tax there should be included in that total income "such an amount of the profits or gains of the firm as is proportionate to his share in the firm." This particular phraseology has been adopted in section 14 (2) (b) and in the proviso to section 55 in order to make it clear that it is the proportionate share of a partner in the whole of the assessable profits of a firm that is to be taken into account in determining his total income, and not merely the amount that he removes from the possession of the firm. Some partnership deeds,

for example, provide that the partners cannot remove more than a certain proportion of the profits in any year or, again, that a certain proportion of the profits must be distributed in charity. It is now made clear in the Act that it is the whole of his proportionate share in the total assessable profits of the firm that is to be taken into account and that that proportionate share cannot be reduced by any consideration of how those profits are utilised.

For the method of dealing with a change in the constitution of a firm see paragraph 96.

For liability in cases of discontinuance of a business owned by a firm see paragraph 97.

For the method of serving notices or requisitions on a firm see paragraph 137.¹

Refunds of Income-tax.—Refunds are necessitated owing to the system of taxation at the source, which occurs in the case of the tax on companies and on registered firms (Section 48 (1) and (2)), and of deduction at the source, which occurs in the case of "interest on securities" and "salaries" (Section 48 (3)). In both these cases the rate of tax if any appropriate to the "total income" of the recipient (the shareholder, partner, security-holder or salaried person) is not known at the time that the tax is assessed or deducted. As stated in paragraph 78, in order to simplify the procedure in connection with refunds section 18 (9) makes it obligatory upon the person deducting income-tax from "interest on securities" to issue to all security-holders a certificate specifying the amount of the tax deducted from the interest and the rate at which it has been deducted, and similarly section 20 (see paragraph 82) requires the principal officer of a company distributing dividends to issue to shareholders a certificate stating that the company has paid or will pay income-tax on the profits that are being distributed. These certificates (or in the case mentioned in paragraph 81, a certificate by a bank) must ordinarily be accepted by Income-tax Officers as conclusive proof that tax has been paid.

Prior to the passing of the Indian Income-tax (Second Amendment) Act, 1933, a refund was permitted only where there was a difference between the rate at which an assessee had tax deducted at source from his dividends, salaries, interest on securities or share of the profits of a

¹ I. T. Manual, para. 71, pages 212-214.

registered firm and the rate applicable to his total income from all sources. The result was that where an assessee had income from one of these sources only, he could not claim a refund of tax deducted at source even if his income was below the minimum taxable limit because there was no rate applicable to his total income. The Act as now amended allows a refund both where there is a difference in rate and when there is no liability at all to tax.

Where interest on securities is paid to estates vested in the Administrator General or the Official Trustee and where the beneficiaries and their shares are known, the beneficiaries are to apply for refund under section 48 (3); but where the beneficiaries and the share of each in the estate are not known, the estate as a whole should be regarded as a separate unit and the Administrator General or the Official Trustee, in whom it is vested should be regarded as the "owner of the securities" for the time being for the purposes of section 48 (3) and he may apply for such refunds. Though a minor, who has been admitted to the benefits of a partnership, cannot have status of a member of a registered firm, section 48 (2) specifically provides for refund due to him under that sub-section in respect of his share of the profits of a registered firm.

The powers of an Income-tax Officer in respect of refunds can be exercised by any other authority appointed by the Governor-General in Council in this behalf under section 48.

For the reason given in paragraph 82, the Income-tax Officer, for purposes of refund in the case of dividends, has to assume that the dividends mentioned in the certificate were taxed at the maximum rate current on the date when the dividends were declared. In the case both of dividends and of interest on securities, the tax deducted has to be added to the "net" dividend or interest paid for the purpose of calculating both the "total income" of the applicant and the amount of refund due (see paragraph 74 and section 48 (1)).

A company, a substantial portion of whose income is known to be derived from tax-free securities, should be required to certify as the statutory form prescribed in Rule 14 provides, what percentage of its income in a given year has actually paid tax or is liable to pay tax; and if a shareholder receives a dividend from a company that derives a substantial portion of its income from tax-free securities, the shareholder should only be

allowed a refund under section 48 in respect of a portion of the dividend corresponding to the proportion of the company's income that is subject to tax.

When the amount distributed by a Company as dividends exceeds the total income, profits or gains as calculated for income-tax purposes of the Company in the year in question, taxed and untaxed, which includes cases where there is no income, profits or gains, or a loss (for example where net receipts from non-tax free sources are wiped out or exceeded by the depreciation allowance) the refunds to shareholders should be calculated with reference to the proportion borne by the tax-free income to the total amount distributed less the tax-free income.

Application for refund under the provisions of the rule 39 should in cases where the applicant is resident in British India, be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or, where he is not chargeable directly to income-tax, to the Income-tax Officer of the district in which he ordinarily resides and such Income-tax Officers are required to give the refunds. In cases where the applicant is resident outside British India, the application should be made to the Income-tax Officer, Non-Residents Refunds Circle, Bombay. The Income-tax Officer will, however, allow a claimant who resides in an Indian State, the option of receiving payment of the refund through the Political Officer in that State, that is to say, the refund voucher that will be issued by the Income-tax Officer will be made payable, if the person applying for the refund so desire, at the Political Treasury of the Government of India in the particular Indian State, or if there is no treasury under the control of the Political Officer, at the prescribed British Indian Treasury.

The necessity for refunds of tax on Government securities can be avoided, by the procedure laid down in paragraph 78, in the case of persons who are either not liable to the tax or who have a taxable income which is sufficiently stable to justify the Income-tax Officer in assuming that the rate applicable to the total income is not likely to move from one grade to another. Again, as has been pointed out in preceding paragraphs, the necessity for a refund can also be avoided in the case of persons who have income which has not been taxed, or from which income-tax has not been deducted, at the source, since such persons can claim a set-off against the tax due on that other income.

In cases where a cash refund is necessary, the procedure laid down in rules 36 to 39 should facilitate the granting of refunds. The application must be made in the form prescribed in rule 36 by persons resident in British India and in that prescribed in rule 36-A by persons not resident in British India and verified in the manner laid down in those rules and must, under rule 37 or 37-A, be accompanied by a return of the "total income" in the form prescribed in rule 19 unless such a return has previously been made or that prescribed in rule 37-A as the case may be. A false statement in such a return or in such a verification is punishable under the provisions of section 182 of the Indian Penal Code, which are set out in paragraph 87 above. The application must also, where necessary, be accompanied by the certificates mentioned in section 18 (9) or section 20. The applications, under rule 40, need not be presented in person, but may be sent by post or by an authorized agent.

Where the applicants reside in India, instead of issuing a refund order payable at a treasury or a branch of the Imperial Bank of India, the amount of refund due may be remitted by money order if the Income-tax Officer concerned is satisfied that this course is more convenient. In that event, the cost of the money order will be borne by Government and should not be deducted from the amount to be refunded. If the applicants reside out of India, the amount of refund under section 48 or 49 of the Act will be remitted to them by bank draft or money order at their cost unless they appoint agents to receive payment in India.

It should be particularly noted that section 48 does not apply to super-tax (see section 58) since super-tax is not deducted at the source or taxed at the source with the exception of cases referred in section 18 (3A), (3B), (3C) and (3D), in which cases no claim for any refund can arise.

Under sub-sections (4) and (5) of this section refunds to non-residents, who are neither British subjects nor subjects of Indian States, are not admissible. Refunds to non-residents, who are British subjects or subjects of Indian States, are to be made with reference to their entire income both in and outside British India which would be liable to Indian income-tax if it accrued or arose or was received in British India. The total income thus computed will of course, include income from agriculture conducted outside British India.

The onus of proving the claim to refund (and therefore of adducing satisfactory evidence of his total income) of course lies on the claimant, and if he fails to discharge it his claim should be rejected. It is not necessary, however, for the purpose of such claims to do more than ascertain the grade of tax applicable, or to compute the total income exactly. Certificates by Income-tax authorities in the United Kingdom or a Dominion should be accepted as proof of the amount of the total income. Certificates of responsible officials in Indian States should also be accepted in support of claims presented by subjects of Indian States.

The Act and the rules thereunder permit of a refund application and the accompanying return of total income being signed and presented by a duly authorised agent, on behalf of his non-resident principal. In fact such agents may carry out the entire transactions in the matter of refunds for their principals.

Sub-sections (4) and (5) of this section should be applied, irrespective of when the income, in respect of which a refund is claimed, accrued, arose or was received, to all claims under this section presented on or after April 1st, 1928. (They should not be applied to claims presented but not disposed before 1st April 1928).¹

Rule 36. In the case of a person resident in British India, an application for a refund of income-tax under section 48 of the Act shall be made in the following form :—

P. 116.

Application for refund of income-tax.

I,

, of

do hereby state that my total income computed in accordance with section 16 of the Indian Income-tax Act, XI of 1922, accruing or arising or received in British India, or deemed under the Act to accrue or arise or to be received in British India, during the year ending on the 31st March 19
amounted to Rs. only.

¹ I. T. Manual, para 116, pages 265-269.

I therefore pray for a refund of

(The portion not required should be scored out.)	Rs.	under "Salaries."
	Rs.	under "Securities."
	Rs.	under "Dividends from companies."
	Rs.	under "Share of profits of the registered firm" known as _____ of which I am a partner.

Signature.

I hereby declare that I am resident in British India, and that what is stated in this application is correct.

Dated _____ 19__ .

Signature.

Rule 36 A. (a) In the case of a person not resident in British India, an application for a refund of income-tax under section 48 of the Act shall be made in the following form :—

Application for refund of income-tax.

I, _____, of _____,

residing at _____ in _____ (country) do hereby state that my total income computed in accordance with section 48 (4) of the Indian Income-tax Act, 1922, during the year ending on the 31st March 19____, amounted to Rs. _____ only, as per return enclosed.

I therefore pray for a refund of

Rs.	under "Salaries."	(The portion not
Rs.	under "Securities."	required should
Rs.	under "Dividends from companies."	be scored out.)
Rs.	under "Share of profits of the	

registered firm," known as _____ of which
I am partner.

Signature.

I hereby declare that I am a British subject. (See
note 2)/subject of _____ State being a State in India.
I also declare that what is stated in this application is
correct.

Dated _____ 19 .

Signature.

Sworn before me (Name)

Designation _____ Signature _____ at _____ on _____



NOTE 1.—The above declaration shall be sworn (a) before a Justice of the Peace, a Notary Public or Commissioner of Oaths if the applicant for refund resides in any part of His Majesty's Dominions outside British India, (b) before a Magistrate or other official of the State or a Political Officer if he resides in a State in India, (c) before a British Consul if he resides elsewhere.

NOTE 2.—"British subject" means a person who is a natural-born British subject, or a person to whom a certificate of naturalization has been granted.

Rule 36 (b) An application for such a refund from a person not resident in British India who has made a similar application as a non-resident in the preceding year shall, unless the Income-tax Officer directs in any particular case that the

application be made in the form prescribed in sub-rule (a), be made in the following form :—

Application for refund of income-tax.

I, _____ of _____ residing at _____ in _____ (country) do hereby state that my total income computed in accordance with section 48 (4) of the Indian Income-tax Act, 1922, during the year ending on the 31st March 19____, amounted to Rs. _____ only, as per return enclosed.

I therefore pray for a refund of

	Rs.	under "Salaries."
(The portion not required should be scored out.)	Rs.	under "Securities."
	Rs.	under "Dividends from companies."
	Rs.	under "Share of profits of the registered firm" known as _____ of which I am a partner.

Signature.

I hereby declare that I am a British subject (see note)/subject of _____ State being a State in India. I also declare that what is stated in this application is correct and that I duly applied for a similar refund as a non-resident last year.

Dated _____ 19 .

Signature.

NOTE—"British subject" means a person who is a natural-born British subject, or a person to whom a certificate of naturalization has been granted.

Rule 37. The application under rule 36 shall be accompanied by a return of total income in the form prescribed under section 22 unless the applicant has already made such a return to the Income-tax Officer.

P. 116.

Rule 37-A. The application under Rule 36-A shall be accompanied by a return of total income in the following form the details of Part I of which but not the total may be

omitted if the person has already submitted a return under section 22 (2) for the same year :—

PART I

Statement of total income accruing or arising or received in British India, or deemed under the Act to accrue or arise or to be received in British India, during the previous year.

1 Sources of income.	2 Amount of profits or gains or income during the previous year.		3 Tax already charged on the income	
	Rs.	a.	Rs.	a.
1. Salaries (including wages, annuity, pension, gratuity, fees, commission, allowances, perquisites, including rent-free quarters) or profits received in lieu of, or in addition to, salary or wages ... (See Note 1)				
1-A. The contributions made by an employer to the account in a recognised provident fund of the person making the return.				
1-B. The interest accruing to the account mentioned in 1-A which is not exempt from income-tax [Section 68-F (2)] ...				
2. Interest on securities (including debentures) already taxed ... (See Note 2)				
3. Interest on securities of the Government of India or of Local Governments declared to be income-tax free ... (See Note 3)				
4. Property as shown in detail in Schedule A ... (See Note 4)				
5. Business, trade, commerce, manufacture, or dealings in property, shares or securities (details as in note 5) ... (See Note 5)				
6. Profession ... (See Note 6)				
7. Dividends from companies ... (See Note 7)				
8. Interest on mortgages, loans, fixed deposits, current accounts, etc., not being income from business				
9. Ground rent ...				
10. Any source other than those mentioned above including any income earned in partnership with others ... (See Note 8)				
Total ...				

PART II

Statement of total income, profits and gains in the previous year, arising, accruing or received out of British India, which if arising, accruing or received in British India, would be included in the computation of total income under section 16.

Name of Country.	Sources of income.	Amount of profits or gains or income during the previous year.
		Rs.
	1. Salaries (See Note 10) *	
	2. Securities (See Note 11) *	
	3. Property (See Note 12) *	
	4. Business (See Note 13) *	
	5. Profession. (See Note 14) *	
	6. Dividends from companies (See Note 15) *	
	7. Interest on securities other than in item 2 above, mortgages, loans, fixed deposits, current accounts, etc., not being income from business (See Note 16) *	
	8. Ground rent *	
	9 Any source other than those mentioned above including any income earned in partnership with others (See Note 17)	
	Total ...	
	Total as per Part I ...	
	Total as per Part II ...	
	Grand Total ...	

* The figures for each country should be separately shown.

Verification.

I declare that to the best of my knowledge and belief the information given in the above statement is correct and complete, that the amounts of income shown are truly stated and relate to the year ended _____ and that no other income accrued or arose or was received by me/the firm during the said year and that I/the firm have no other sources of income.

*Signature.**Dated* 19 .

N.B.—(a) Income accruing to you outside British India received in British India, should be entered in Part I and not in Part II.

(b) All income from whatever source derived must be entered in the form including income received by you as a partner of a firm.

(c) "Previous year" means 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 12 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.

Note 1.—In column 2 should be shown the gross amount of salary and not the net amount after deductions on account of income-tax, provident funds, etc.

Note 2.—"Interest on securities" means the interest on promissory notes or bonds issued by the Government of India or a Local Government, or the interest on debentures or other securities for money issued by or on behalf of a local authority or company. Where income-tax has been deducted from the interest, or where the interest has been paid income-tax free, the amount of tax so deducted or paid should be added to the amount of interest actually received, and the gross amount so arrived at should be entered in column 2 of the statement. The term "interest on securities" does not include interest on fixed deposits or mortgages or other loans, which have to be shown under heading 8.

The interest on securities of the Government of India or of Local Governments declared to be income-tax free should be shown under head 3. Those which are not declared to be income-tax free should be included under this head.

Entries under this head must be supported by the certificates issued by the person or company paying the interest under section 18 (9) of the Act.

Note 5.—(a) Where you keep your accounts on the mercantile accountancy or book profits system, you must file a return in the following form :—

Income, profits, or gains from business, trade, commerce.

	Rs.	As.
Income, profits or gains as per Profit and Loss Account for the year ended 19		
Add—Any amount debited in the accounts in respect of—		
1. Reserve for bad debts		
2. Sums carried to reserve for provident or other funds		
3. Expenditure of the nature of charity or presents		
4. Expenditure of the nature of the capital		
5. Income-tax or super-tax		
6. Drawings or salary of proprietor or partners		
7. Rental value of property owned and occupied		
8. Cost of additions to, or alterations, extensions, improvements of any of the assets of the business		
9. Interest on the proprietor's or partner's capital, including interest on reserve or other funds		
10. Losses sustained in former years		
11. Losses recoverable under an insurance or contract of indemnity		
12. Depreciation of any of the assets of the business		
13. Private or personal expenses and expenses not incurred solely for the purpose of earning the profits		
Total		
Deduct—Any profits included in the account already charged to Indian Income-tax and the interest on securities of the Government of India or of Local Governments declared to be Income-tax free.		
Balance		

(Signature of the person making the return.)

Dated

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(b) Where you do not keep your accounts in such a form, you must file a statement showing how you arrive at the taxable profits, i.e., showing details of the gross receipts

and of the expenditure you propose to set against those receipts. No deductions are permissible on account of—

- (i) Property owned and occupied by the owner of a business for the purposes of a business ;
- (ii) Additions to, or alterations, extensions, or improvements of, any of the assets of the business ;
- (iii) Interest on the capital of the proprietors or partners of the business ;
- (iv) Bad debts not actually written off in the accounts ;
- (v) Losses sustained in previous years ;
- (vi) Reserves of any kind ;
- (vii) Sums paid on account of the income-tax or super-tax or any tax levied by a local authority other than local rates or municipal taxes in respect of the portion of the premises used for the purpose of the business ;
- (viii) Any expenditure of the nature of charity or a present ;
- (ix) Any expenditure of the nature of capital ;
- (x) Any loss recoverable under an insurance or a contract of indemnity ;
- (xi) Depreciation of any kind other than that specified in the Act ;
- (xii) Drawings or salaries of the proprietors or the partners ;
- (xiii) Private or personal expenses of the assessee ;
- (xiv) Any expenditure of any kind which is not incurred solely for the purpose of earning the profits.

If you have included any such sums in your expenditure in your books, you must exclude them from the expenditure permissible for the purpose of arriving at your taxable profits.

(c) You are also required to attach a statement showing the sums charged in your accounts under the provisions of section 58 K (2).

NOTE 6.—The income, profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of such profession or vocation, provided that no allowance is made on account of any of your personal expenses. Professional fees received by you in any part of India (whether within British India or not) must be included by you in your receipts.

NOTE 7.—Income-tax chargeable on the profits of companies is paid by the companies, so that the dividends received by shareholders represents the net amount remaining after any income-tax due by the company has been paid. This amount should be entered in column 2 of the statement. The proportionate tax will be added in the Income-tax Office.

If the rate of tax applicable to your total income is less than the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividends, you may, by attaching the company's certificate received with the dividends, have the excess collected on your dividends from the company set against the tax payable by you on your other income instead of having to apply separately for a refund.

Where a company derives a part of its profits in British India and part outside British India, such portion of its dividend as is payable out of profits taxable in British India should be shown in Part I under item 7 and the balance in Part II under item 6.

NOTE 8.—Agricultural income from land not paying land revenue or local rates to an authority in British India should be included under this head or under income from business according to circumstances.

NOTE 9.—Rebates in respect of insurance premia or of a contract for annuity cannot be allowed in connection with a claim for refund. They can only be allowed in the course of an assessment.

NOTE 10.—Under this head should be shown interest on securities issued by deductions on account of income-tax, should be shown.

NOTE 11.—Under this head should be shown interest on securities issued by the Government of India or a Local Government or a local authority in India on which interest is paid or payable outside British India, and the interest on debentures of companies operating in India paid or payable outside British India. For this purpose "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." Interest on all other securities should be shown under item 7—see Note 16. Interest should be shown gross if foreign tax is deducted therefrom after the assessee receives the interest; if the tax is deducted at source, the net interest received should be shown.

NOTE 12.—See instructions in Note 4.

NOTE 13.—The details should be given as explained in Note 5, but there will be no "deduct" entry on account of profits included in the amount already charged to Indian income-tax and the interest on securities of the Government of India or a Local Government in India declared to be income-tax free.

NOTE 14.—This should show professional fees received outside British India.

Note 15.—The figure to be shown here is the amount actually received by the shareholder irrespective of whether the dividends are declared free of tax or not.

Where a company derives a part of its profits in British India and part outside British India, such portion of its dividend as is payable out of profits taxable in British India should be shown in Part I under item 7 and the balance in Part II under item 6.

Note 16.—This head will include inter alia interest on all securities other than those entered in item 2, see Note 11. Interest should be shown gross if foreign tax is deducted therefrom after the assessee receives the interest; if the tax is deducted at source, the net interest received should be shown.

Note 17.—Agricultural income from land and not included in Part I should be shown under this head.

Rule 38. Where the application under rule 36 or rule 36-A is made in respect of interest on securities or dividends from companies, the application shall be accompanied by the certificate prescribed under section 18 (9) or section 20, as the case may be.

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Rule 39. The application under rule 36 or rule 36-A shall be made as follows :—

- (a) If the applicant is resident in British India, to the Income-tax Officer of the District in which the applicant is chargeable directly to income-tax, or if he is not chargeable directly to the Income-tax Officer of the district in which he ordinarily resides ;
- (b) If the applicant is resident outside British India, to the Income-tax Officer appointed by the Central Board of Revenue.

Rule 39A. An application under section 48-A shall be made as follows :—

- (a) If the applicant is resident in British India, to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax, or, if he is not chargeable directly, to the Income-tax Officer of the district in which he ordinarily resides ;
- (b) if the applicant is resident outside British India, to the Income-tax Officer appointed by the Central Board of Revenue.

Deceased Partner.—The legatee of a deceased partner is not entitled to a refund under this section. The estate of a deceased partner is entitled to a refund only when the assessment is made on the firm after the death of such partner.¹

Reference to High Court from an order passed by the Commissioner against an order of the Income-tax Officer refusing a refund.—It has been held that no application to High Court for an order asking the Commissioner to make a reference to the High Court is maintainable in case where the Commissioner only refused to revise an order of the Income-tax Officer refusing a refund, as such an order of the Commissioner is not an order prejudicial to the assessee within the meaning of section 33.² This case arose from an order of the Income-tax Officer passed under section 50.

Limitation.—Limitation in the case of a direct assessee is the last day of the financial year in which tax was deducted

¹ A. I. R. 1932 Sind 48.

² N. A. S. V. Venkatachalam Chettiar v. Commissioner of Income-tax, Madras, 1935 I. T. L. J. page 140.

at source or the tax was levied. In the case of indirect assessee limitation runs from the last day of the calendar year.

Where the assessment upon the total income of the assessee is made more than a year after the last day of the year in which the tax on the profits of a Company was recovered, and after 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, Section 50 of the Income-tax Act precludes a claim for a refund of Income-tax under Section 48 (1), if made after the expiration of the period mentioned in Section 50.¹

48-A. (1) If in 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.

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(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 is 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.

¹ Adamjee Hajee Dawood & Co. Ltd. v. Commissioner of Income-tax, Burma, 1935 I. T. L. J. page 325.

(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.

Section 48-A was inserted by the Indian Income-tax Act XVIII of 1933.

General power to grant refunds.—Cases do arise where tax has been paid by or on behalf of a person with which he was not properly chargeable or which was in excess of the amount with which he was properly chargeable, which nevertheless do not attract the operation of section 48. For instance an assessee deriving his income entirely from interest on securities may have paid insurance premia for which he can claim a rebate if a formal assessment is made on his income from such interest. But if no such assessment is made he cannot under the provisions of section 48 claim it as a refund. Section 48-A is designed to cover such cases. Where an assessee satisfies an Income-tax Officer that he has paid tax with which he was not properly chargeable for any reason, the latter should allow a refund of the amount so paid. Similarly the Assistant Commissioner and the Commissioner in exercise of their appellate powers can grant such refunds.

As regards the procedure for applying for refunds see paragraph 116.

As regards appeal against an order an Income-tax Officer refusing to grant a refund see paragraph 127.

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

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¹ I. T. Manual, para 117, page 269.

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.

Relief from double income-tax of incomes taxed in British India and the United Kingdom.—At a conference between the representatives of the Home Government and of the Dominions and of India an agreement was arrived at to the following effect : That in respect of income taxed both in the United Kingdom and in India there should be

deducted from the appropriate rate of the United Kingdom income-tax (including super-tax), the whole of the rate of the Indian income-tax (including super-tax), charged in respect of the same income, subject to the limitation that in no case should the maximum rate of relief given by the United Kingdom exceed one-half of the rate of the United Kingdom income-tax (including super-tax) to which the individual tax-payer might be liable and that any further relief necessary in order to confer on the tax-payer relief amounting to the lower of the two taxes (United Kingdom and India) should be given by India. That is to say, the arrangement is that where income is liable to taxation both in the United Kingdom and in India, it should pay only at the highest rate leviable in either country. These proposals have been accepted by the Government of the United Kingdom and are embodied in section 27 of the Finance Act of 1920. A copy of that section is given below :

* * * * *

27. (1) If any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom income-tax for any year of assessment on any part of his income proves to the satisfaction of the Special Commissioners that he has paid Dominion income-tax for that year in respect of the same part of his income, he shall be entitled to relief from United Kingdom income-tax paid or payable by him on that part of his income at a rate thereon to be determined as follows:—

- (a) if the Dominion rate of tax does not exceed one-half of the appropriate rate of United Kingdom tax, the rate at which relief is to be given shall be Dominion rate of tax;
- (b) in any other case the rate at which relief is to be given shall be one-half of the appropriate rate of the United Kingdom tax.

For the purpose of this section, the expression "the appropriate rate of United Kingdom tax" means the rate at which the claimant for the year to which the claim relates has borne or is liable to bear United Kingdom income-tax and where the claimant is liable to United Kingdom super-tax the expression "the appropriate rate of United Kingdom tax" means a rate equal to the sum of the rates at which he has borne or is liable to bear United Kingdom income-tax and super-tax, respectively, for that year.

(2) Where a person has not established his claim to relief under this section for any year of assessment before the first day of January in that year, the relief shall be granted by way of repayment of tax.

(3) Where by reason of the allowance of relief under this section the rate of United Kingdom income-tax deducted from or paid in respect of any part of the income of any individual is less than the standard rate, and the rate of the relief so allowed is greater than the rate appropriate to the case of that individual, such an

adjustment shall be made in allowing to that individual any relief to which he may be entitled under the provisions of this part of this Act relating to the rate of tax on the first two hundred and twenty-five pounds of taxable income as may be necessary to secure that the amount of United Kingdom income-tax finally paid or borne by him shall be equal to the amount which would have been paid or borne if the relief under this section had in the first instance been given at the rate appropriate to his case.

(4) Notwithstanding anything in the Rules applicable to Case IV or Case V of schedule D or in any other provision of the Income-tax Acts, no deduction shall be made on account of the payment of Dominion income-tax in estimating income for the purposes of United Kingdom income-tax, and where income-tax has been paid or is payable in any Dominion either on the income out of which income subject to United Kingdom income-tax arises or is received, or as a direct charge in respect of that income, the income so subject to United Kingdom income-tax shall be deemed to be income arising or received after deduction of Dominion income-tax and an addition shall, in estimating income for the purposes of the United Kingdom income-tax, be made to that income of the proportionate part of the income-tax paid or payable in the Dominion in respect of the income out of which that income arises or is received together with the full amount of any Dominion income-tax directly charged or chargeable in the Dominion in respect of that income :

Provided that—

- (a) where any income arising or received as aforesaid consists of dividends which are entrusted to any person in the United Kingdom for payment and the Special Commissioners are satisfied that the person so entrusted is not in a position to ascertain the amount, if the addition to be made under this sub-section the assessment and charge may be made on the amount of the dividends as received by the person so entrusted, but in any such case the amount of the addition shall be chargeable on the recipient of the dividends under Case VI of Schedule D ; and
- (b) where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax, then in assessing or charging income-tax in the United Kingdom in respect of income assessed or charged to income-tax in that Dominion deduction shall be allowed in estimating income for the purpose of United Kingdom income-tax of an amount equal to the difference between the amount of the Dominion income-tax paid or payable in respect of the income and the total amount of the relief granted from the United Kingdom income-tax in respect of the Dominion income-tax for the period on the income of which the assessment or charge to United Kingdom income-tax is computed.

In this sub-section the expression dividends includes any interest, annuities, dividends, shares of annuities, pensions, or other annual payments or sums in respect of which tax is charged under the Rules applicable to Schedule C or under Rule VII of the Miscellaneous Rules applicable to Schedule D.

(5) Where under Rule 20 of the General Rules applicable to Schedules A, B, C, D and E, a body of persons is entitled to deduct income-tax from any dividends, tax shall not in any case be deducted at a rate exceeding the rate of the United Kingdom income-tax as reduced by any relief from that tax given under this section in respect of any payment of Dominion income-tax.

(6) Where under the law in force in any Dominion provision is made for the allowance of relief from Dominion income-tax in respect of the payment of United Kingdom income-tax the obligation as to secrecy imposed by the Income-tax Acts upon persons employed in relation to Indian Revenue shall not prevent the disclosure to the authorised officer of the Government of the Dominion of such facts as may be necessary to enable the proper relief to be given in cases when relief is claimed both from United Kingdom income-tax and from Dominion income-tax.

(7) The Commissioners of Inland Revenue may from time to time make regulations generally for carrying out the provisions of this section, and may, in particular by those regulations provide—

- (a) for making such arrangements with the Government of any Dominion to which the last preceding sub-section applies as may be necessary to enable the appropriate relief to be granted;
 - (b) for prescribing the year which in relation to any Dominion income-tax is, for the purposes of relief under this section, to be taken as corresponding to the year of assessment for the purposes of United Kingdom income-tax.
- (8) In this section—
- (a) The expression " Dominion " means any British possession, or any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions :
 - (b) The expressions " United Kingdom income-tax " and " United Kingdom super-tax " mean respectively income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts :
 - (c) The expression " Dominion income tax " means any income-tax or super-tax charged under any law in force in any Dominion, if that tax appears to the Special Commissioners to correspond with United Kingdom income-tax or super-tax :

- (d) The expression "Dominion rate of tax" means the rate determined by dividing the amount of the Dominion income-tax paid for the year by the amount of the income in respect of which the Dominion income-tax is charged for that year, except that where the Dominion income-tax is charged on an amount other than the ascertained amount of the actual profits the Dominion rate of tax for the purposes of this section shall be determined by the Special Commissioners.

For the purposes of this section, the rate of United Kingdom income-tax shall be ascertained by dividing by the amount of the taxable income of the person concerned the amount of tax payable by that person on that income before deduction of any relief granted in respect of life assurance premiums or any relief granted under the provisions of this section, and the rate of United Kingdom super-tax shall be ascertained by dividing the amount of the super-tax payable by any person by the amount of that person's total income from all sources as estimated for super-tax purposes.

* * * * *

Under that section a person whose income is assessed both in the United Kingdom and in India is entitled to claim from the authorities of the United Kingdom a refund or rebate of the rate levied in India up to one-half of the English rate.

Section 49 of the Indian Income-tax Act, therefore, provides that where any further relief is to be given in order to secure that such a person shall not pay a higher rate than the highest rate in either country, such relief will be given by India, subject to the limitation that the relief given in India shall not exceed half of the rate of income-tax and super-tax combined. Up to the year 1921-22 the Indian rates of income-tax and super-tax combined were less than half the rates in the United Kingdom, and, therefore, no claim can be made under this section in respect of tax levied up to that year. Relief can only be claimed in India, when, owing to any alteration in the rates, the Indian rate is more than half the English rate, and the amount of relief would merely be the amount by which the Indian rate exceeds half the English rate. The rates prescribed in India in most cases now amount to more than half the English rates as fixed for the year 1933-34. The table below shows the amount of English income-tax and super-tax and the effective rate per rupee contrasted with similar figures for the Indian rates.

English.				Indian.		
Income.	Income-tax.	Super-tax.	Effective rate per rupee.	Income-tax.	Super-tax.	Effective rate per rupee.
1	2	3	4	5	6	7
Rs.	Rs.	Rs. A.	Rs. A. P.	Rs. A.	Rs. A.	Rs. A. P.
15,000	3,375	...	0 3 7 1/5	1,458 5	...	0 1 6 2/3
25,000	5,625	...	0 3 7 1/5	2,886 5	...	0 1 10 1/6
30,000	6,750	183 5	0 3 8 9/25	4,192 11	...	0 2 2 4/5
45,000	10,125	1,375 5	0 4 1 1/15	6,835 15	820 5	0 2 8 2/3
60,000	13,500	3,392 0	0 4 6 1/20	9,114 9	2,005 3	0 2 11 3/5
75,000	16,875	6,096 0	0 4 10 4/5	11,393 4	3,372 6	0 3 1 4/5
90,000	20,250	9,258 11	0 5 2 14/15	13,671 14	4,739 9	0 3 3 7/24
1,05,000	23,625	12,558 11	0 5 6 1/6	16,588 9	6,289 1	0 3 5 5/6
1,20,000	27,000	16,592 0	0 5 9 3/4	18,958 5	8,203 2	0 3 7 9/20
1,35,000	30,375	20,762 11	0 6 5/7	21,327 14	10,117 3	0 3 8 8/11
1,50,000	33,750	25,300 0	0 6 3 3/5	23,697 15	12,031 4	0 3 9 3/4
2,25,000	50,625	48,675 5	0 7 3/4	35,546 15	25,247 5	0 4 3 9/10
3,00,000	67,500	74,342 0	0 7 6 3/4	47,395 14	42,109 6	0 4 9 3/10
4,50,000	1,01,250	1,29,342 0	0 8 2 2/5	71,093 13	88,593 12	0 5 8 4/25
6,00,000	1,25,000	1,87,092 0	0 8 7 1/15	94,791 13	1,51,484 6	0 6 6 4/5
Companies	...	...	0 3 7 1/5	...	...	0 3 10 1/3

Note.—The allowances and abatements allowed by the United Kingdom Income-tax have not been taken into account in working out the figures of United Kingdom income-tax in the table. The income-tax and surtax have also been assumed to be charged on the same income. The figures are therefore only useful as generally indicating the relative rates of taxation in the two countries

It will be observed that the Indian rate for individuals and firms is less than half the English rate up to an income of about Rs. 25,000. Persons with such incomes which are wholly taxed both in the United Kingdom and in India can, therefore, claim a refund or rebate of the whole of Indian rate to be set against the English rate from the authorities in England and there will be no claim to relief in India. The Indian rate for an income of Rs. 25,000 is more than half the English rate and a person who has paid income-tax both in the United Kingdom and in India on this income, could claim a refund from the English authorities of a sum equivalent to 1 anna 9 3/5 pies per rupee on his assessed income and therefore could claim from the Indian Income-tax authorities a refund of 1 1/30 pies per rupee of his assessed income. An assessee must have

obtained relief from the authorities in the United Kingdom and must prove that he has done so and at what rate the relief was granted before any relief can be given to him in India. For limitation of the claims for refund see paragraph 126.

It is necessary to emphasize the fact that the relief under this section proceeds and is based upon a comparison of the rate of tax in India with the rate of tax in the United Kingdom and not of the comparative amounts of tax paid in either country. That is to say, what is compared is the rate of the Indian tax paid by the claimant for the Indian year of assessment corresponding to the United Kingdom year of assessment in respect of the part of the claimant's income liable to United Kingdom tax and not the particular amount of such part of his income liable to United Kingdom income-tax as is charged to Indian income-tax. The rate of Indian income-tax paid in respect of the part of the income in question having been ascertained, the relief from United Kingdom income-tax is granted on that part of the income as charged to United Kingdom income-tax for that year of assessment, irrespective of the fact that the amount of the United Kingdom assessment may be greater or less than the amount of the Indian assessment for the corresponding Indian year of assessment or that the amount of relief may fall short of or exceed the amount of Indian tax actually paid. In other words, under the system of relief no enquiry is made in the United Kingdom into any differences of basis of computation under the Indian and United Kingdom rules of assessment, provided that it is clear that on whatever part of the income he claims relief, the claimant has paid (for the Indian year of assessment corresponding to the United Kingdom year of assessment for which relief is claimed) Indian tax in respect of his income from that source, however, that income may have been computed for the purposes of assessment to the Indian tax; and the procedure in India in determining the balance of relief to be given in this country proceeds in exactly the same way.

This system of relief is one that was deliberately adopted at the conference, the principle followed being summarised as follows in the report of the United Kingdom Royal Commission, viz. :—

“ That there will be no interference either by the United Kingdom or by a Dominion with the basis of assessment adopted by any other part of the Empire, and further that the settlement should be independent of increases and decreases in rate of tax and alteration in the basis of assessment whether in the United Kingdom or in the

Dominions. This intention is clearly illustrated by the following examples which are given in the report.

Example 1.—A, a British resident, derives a fluctuating unearned income directly from a Dominion whose rate of tax applied to that income is 1s. 6d. in the £. A has no other income, and his rate of tax in the United Kingdom varies according to the amount of his income. The following figures illustrate the position:—

		United Kingdom.	Dominion.
1st year.			
Tax before relief	...	£1,000 at 3s. 9d.	£600 at 1s. 6d.
Relief	...	£1,000 at 1s. 6d.	Nil.

Tax after relief	...	£1,000 at 2s. 3d.	£600 at 1s. 6d.
2nd year.			
Tax before relief	...	£300 at 3s. 6d.	£900 at 1s. 6d.
Relief	...	£300 at 1s. 6d.	Nil.

Tax after relief	...	£300 at 1s. 6d.	£900 at 1s. 6d.

In this example, although it was the same description of income assessed each year, there were wide variations in the amounts assessed in the United Kingdom and in the Dominion. This might happen owing to different methods of computing taxable profit and the differences are intentionally, exaggerated to illustrate the principles to be followed.

Example 2.—B is a British resident receiving as shareholder an income of £900 from a British Company C which derives the whole of its income from a Dominion. In the first place relief will be given to the Company C, and in order to illustrate how this is done, let it be assumed that the Company's profits as calculated for the United Kingdom tax are £60,000, and as calculated for Dominion tax £50,000. Adjustment will be made to the Company as follows:—

		United Kingdom.	Dominion.
Tax before relief	...	£60,000 at 6s. 6d.	£50,000 at 1s. 6d.
Relief	...	£60,000 at 1s. 6d.	Nil.

Tax after relief	...	£60,000 at 4s. 6d.	£50,000 at 1s. 6d.

The Company when paying the dividend to B would deduct 4s. 6d. in the £, United Kingdom tax, and intimate on the dividend warrant that the relief in respect of double income tax was 1s. 6d. in the £.

Let it be assumed that B's dividend of £900 is his total income, so that his proper rate of charge to United Kingdom income-tax is 3s. 9d. He has suffered Dominion tax to the extent of 1s. 6d. in the £, and his ultimate rate of United Kingdom income-tax is

2s. 3d. in the £ and he will accordingly be repaid 4s. 6d. minus 2s. 3d.—2s. 3d. in the £ on £900.

Example 3.—D is a British resident receiving £900 from Company C, but he has other income arising in the United Kingdom, and his combined rate of income-tax and super-tax is 7s. 6d. in the £. He is entitled, therefore, to double income-tax relief up to a maximum of 3s. 9d. but the whole of the Dominion tax (1s. 6d. in the £) has already been allowed to the Company C, who deduct 4s. 6d. United Kingdom tax on payment of the dividends, and no further relief is due. D will, therefore, be assessable in respect of the £900 at 1s. 6d. in the £ viz., 7s. 6d. less 4s. 6d. United Kingdom tax deducted, and 1s. 6d. Dominion tax.¹¹

It will be noted that in the table at page 273 (of the I. T. Manual cited before) the amount of relief which a company can get under the English Act is at the rate of 2 annas in the rupee and that the amount which they can claim from the Indian authorities will be at a rate of 1 anna 11½ pies in the rupee. The reason for the comparative high rates in India as compared with the United Kingdom of the tax on companies is that the Indian rate includes the super-tax on companies while the English rate does not include the United Kingdom Corporation tax. At the same time it must be noted that the Indian rate of 3 annas and 11½ pies given in the table for companies is a rate which in actual practice will never be reached. It includes the 2 annas and 8½ pies income-tax rate including the surcharge of 25 per cent. and the flat rate of 1 anna 3 pies for super-tax including the surcharge of 25 per cent., but the flat rate of 1 anna 3 pies is never charged on the whole of the assessable income but only on the portion of the income in excess of Rs 50,000. The rate for the portion of the income below Rs. 50,000 is nil. In order to get at the comparative rate, the tax paid by the company has to be divided by its total income. Thus in the case of a company with a profit of 1 lakh the comparative rate (both income-tax and super-tax) would merely be 3 annas and 4 pies while the rate in the case of a company with a profit of 2 lakhs, it would be merely 3 annas and 8 pies. In both cases a relief of 2 annas in the rupee would be obtained in the United Kingdom and the balance in India.

In order to obtain relief in India a claimant is required to supply the official receipt for the United Kingdom income-tax paid, the notice of assessment in particular showing the basis on which the liability has been computed and a certificate of the Income-tax authorities showing what relief has actually been granted to him in the United Kingdom.

The following are further examples illustrating the method to be adopted in calculating relief due under section 49 of the Act:—

Example 1.—A, a married man with one child, is resident in United Kingdom; he has a fixed income of Rs. 10,500 from property in India and has no other income, his liability to tax is:—

In the United Kingdom.			Rs. a. p.		In India
Assessable income	...	...	10,500	0 0	Income-tax on Rs. 10,500 at 1 anna 3 pies in the rupee, Rs. 820-5-0
Less personal allowance	...	Rs. 2,000			
Deduction for child	...	Rs. 667			
			<u>2,667</u>	<u>0 0</u>	
Taxable income	...	...	7,833	0 0	
Tax on the 1st Rs. 2,333 at As. 2 in the rupee	...	...	291	10 0	
Tax on balance Rs. 5,500 at As. 4 in the rupee	...	...	...	...	1,375 0 0
Total tax (before a relief in respect of Indian income-tax)	...	...	...	...	1,666-10 0

For the purposes of calculating "the appropriate rate of United Kingdom tax" this amount is not to be reduced by any relief granted in respect of any life assurance premium.

The United Kingdom tax (Rs. 1,666-10-0), divided by the taxable income (Rs. 7,833) gives an "appropriate rate of United Kingdom tax" of approximately 3 annas 5 pies. A has paid Indian income-tax in respect of the same income at a rate of 1 anna 3 pies in the rupee, that is, a rate which is less than half the United Kingdom rate and the relief from the United Kingdom tax will, therefore, be a sum equal to the Indian rate on Rs. 7,833.

Example 2.—B is a bachelor resident in the United Kingdom with no dependents and has an earned income of £1,000 assessable to United Kingdom income-tax. He has no other income and pays income-tax in India in respect of the income in question. His liability to tax is as follows:—

				United Kingdom.	
				£	s. d.
Total income	...	...	...	1,000	0 0
Less earned income allowance one-sixth of £1,000	...	...	...	166	13 4
Assessable income	...	...	...	833	6 8
Less personal allowance	...	...	...	100	0 0
Taxable income	...	...	...	733	6 8
Tax on 1st £175 at 2s. 6d.	...	...	...	21	17 6
Tax on balance £421 at 4s. 6d.	...	...	...	139	10 0
Total tax (before relief in respect of Indian income-tax)	...	...	...	161	7 6

The tax (£161-17-6) divided by the taxable income (£733) gives an "appropriate rate of the United Kingdom tax" of 4s. 5d. or 3.5 annas in the rupee ; Indian income tax is payable on this income at a rate of 1 anna 3 pies in the rupee, so that B is entitled to get relief from the United Kingdom at the rate of 1 anna 3 pies in the rupee (that is, 1s. 7d. in the pound) on £733 and there is no balance of relief to be given in India.

Example 3.—C is a company the whole profits of which are taxed both in the United Kingdom and in India. The Indian rate of tax paid by the company is 3 annas and 11 1/2 pies in the rupee while the "appropriate rate of United Kingdom tax" for the company is 5s. in the pound. The company can get relief at the rate of 2-6 in the pound (or 2 annas in the rupee) in the United Kingdom and on proof of payment of United Kingdom tax and of the grant of United Kingdom relief can claim from the Income-tax authorities in India the balance of relief, namely, 1 anna 11 1/2 pies in the rupee.

Corporation profits tax paid in the United Kingdom should not be deducted from the income taxed in India for the purpose of calculating the relief claimed under section 49.

In considering claims for relief under this section in the case of companies which are assessed separately in India but jointly in the United Kingdom, and one of which makes a loss and the other a profit, it is necessary to scrutinise the United Kingdom assessment to see how much of the income from each source has been taxed. Since one company has made a loss which has been allowed in the United Kingdom assessment, it is clear that only part of the Indian profits of the other company which has made profit has paid tax in the United Kingdom. It is only on this part that relief is allowable since that part only has suffered double taxation.

This section merely provides for relief from double tax where the same income is assessed to tax both in the United Kingdom and in India. It does not provide for relief in other cases.¹

Relief from double tax of incomes taxed in British India and in the United Kingdom—Method of calculating relief in India.—The following method should be followed in calculating the "Indian rate of tax," as defined in section 49 (2) (b) of the Indian Income-tax Act :—

Indian super-tax is charged on the whole of the income, including the Rs. 50,000 that are free of super-tax, since under section 55 of the

¹ I. T. Manual, para 120, pages 270—275.

Indian Income-tax Act, it is said to be "charged" in respect of the "total income." The result is that the first lakh of income is to be regarded as a single slab charged to super-tax at the effective rate of 6 pies in the rupee.

Thus, for the purpose of double income-tax relief, "doubly charged" income of any amount exceeding Rs. 50,000 can only consist of either—

- (1) income liable to super-tax alone, or
 - (2) income liable to both income-tax and super-tax,
- or,
- (3) (a) income liable to both income-tax and super tax and
 - (b) income liable to super-tax alone,

i.e., there can at most be only two slabs. There can be no part liable to income-tax alone since no income is exempt from super-tax alone. The whole or a part of the income will, of course, be liable to super-tax alone if the whole or any part of the income is exempt from income-tax but not from super-tax. The relief should be calculated separately on each of the two slabs just mentioned.

This method is that followed by Somerset House.¹

Relief from double tax of incomes taxed in British India and the United Kingdom—Method of calculating relief in India where there are differences in computing taxable income in the two countries.—In practically all cases the United Kingdom gives relief in respect of the income charged in the United Kingdom whether that be higher or lower than the income charged in the Dominion. The corollary of this is that Dominions should follow the same principle. The following method should therefore be followed in computing relief in British India :—

- (a) If the income as computed in British India is higher or lower than that computed in the United Kingdom because either
 - (1) Particular allowances and deductions such as wear and tear differ in the two countries or
 - (2) the periods of income on which the tax is charged are not identical,
 relief in British India should be calculated on the income computed in British India.

¹ I. T. Manual, para 121, page 278.

- (b) If the difference between the incomes charged in the two countries is due to a loss being carried forward in the United Kingdom and not in British India, and if there is no other cause of variation, the income will always be lower in the United Kingdom since the carry forward of losses is not allowed in British India. In such cases relief should not be given in India on the losses carried forward in the United Kingdom.
- (c) If the difference between the income charged in the two countries is due to the fact that remittances only are taxed in British India and the whole income in the United Kingdom the remittances alone should be regarded as having suffered double taxation.
- (d) Where a defined part of the income is exempted from tax or falls altogether outside the scope of the tax in either country, for example, interest on tax-free securities in either country, or agricultural income in British India, relief will not be allowed in respect of the tax on such part of the income. It may be (however) that the exempted or untaxed part of the income is not defined or separable, but forms an element in the income doubly taxed. For example, remittances may be made to the United Kingdom from British Indian income derived from both taxed and tax-free sources in British India, and it may not be possible to say how much is derived from each. In such circumstances relief will be allowed on a part of the remittances proportionate to the part of the income in British India that is derived from sources, subject to tax. The deduction from taxable income allowed in super-tax assessments in British India is not to be treated as exempt from super-tax.
- (e) In the case of tea-gardens, relief will be allowed on the 40 per cent. of the combined agricultural and non-agricultural profits liable to tax in British India.¹

Relief from double tax of incomes taxed in British India and in the United Kingdom—Procedure.—The following procedure

¹ I. T. Manual, para 122.

should be followed for the grant of relief in respect of double taxation in India and in the United Kingdom :—

When during an assessment it is known that an assessee will be entitled to relief on account of double taxation on any part of his income, the amount of the relief may be calculated by the Income-tax Officer so far as is possible, and the assessee may be allowed to pay the demand in two instalments, the second of which will represent the amount of relief calculated to be due. The date of the first instalment will be that ordinarily fixed for the payment of a demand of income-tax, while the second will be payable two or, if possible, three or four months from the date of the notice of demand. If the assessee produces the necessary British certificates and establishes his claim to relief under section 49 of the Indian Income-tax Act, 1922, the demand for the second instalment should be modified by cancellation or reduction or, if the relief is greater than the second instalment and the first instalment has been paid, a refund should be granted.¹

Relief from double tax of incomes taxed in British India and in Indian States.—Arrangements have also been made with several Indian States, which levy income-tax, for the grant of relief from the payment of double income-tax of incomes which are taxed both in any of these Indian States and in British India. Relief is granted in British India at a rate equal to half the Indian State rate subject to a maximum of half the British Indian rate. The State will grant relief at a rate equal to half its rate of tax. The following is a copy of the Notification prescribing the procedure to be followed by persons claiming relief from the payment of double income-tax :—

FINANCE DEPARTMENT (CENTRAL REVENUES).

Notification No. 25, dated the 1st July, 1926 (as subsequently amended.)

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Governor-General in Council is pleased to make the following modifications in respect of income-tax, in favour of income on which income-tax has been charged both in British

¹ I. T. Manual, para 123.

India and in one of the Indian States referred to in the schedule to this notification (hereinafter called the said schedule), namely:—

1. In this notification—

- (a) the expression "State income-tax" means income-tax and super-tax charged in accordance with the provisions of the law relating to income tax for the time being in force in the State concerned ;
- (b) the expression "State rate of tax" means the amount of State income-tax divided by the amount of the larger of the two incomes on which income-tax and super-tax respectively have been charged by the State ; and
- (c) the expressions "Indian income-tax" and "Indian rate of tax" have the same meanings as in clauses (a) and (b), respectively, of section 49 (2) of the Act.

2. 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 at any time paid State income-tax in respect of the same part of his income, he shall be entitled to the refund of a sum calculated on that part of his income at a rate equal to half the state rate of tax; provided that the rate at which the refund shall be given shall not exceed one-half of the Indian rate of tax.

3. Every application for refund of income-tax under this notification shall be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or if he is not chargeable directly to income-tax, to the Income-tax Officer for the district in which the applicant ordinarily resides, or if he is not resident in British India—

- (i) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or
- (ii) if he has never been so resident, to the Income-tax Officer of the district or area where the income-tax for the refund of which application is made was deducted.

Such application may be presented by the applicant in person or by a duly authorized agent or may be sent by post, and shall be in the following form :—

Applications for relief from double income-tax under Notification No. 25, dated the 1st July 1926.

I, _____ of _____ do hereby state that I have paid (name of state) State Income tax/Income-tax and super-tax amounting to Rs. _____ for the year ending 19 _____ on an income of Rs. _____ and that Indian Income-tax/Income-tax and super-tax of Rs. _____ has also been paid on the same income/part of the same income amounting to Rs. _____ I now pray for relief at the rate of _____ amounting to Rs. _____ under Notification No. 25, dated the 1st July 1926, to which I am entitled. My income from all sources to which this Notification applies during the "previous year" ending on the _____ 19 _____, amounted to Rs. _____ only—see Return of income attached/already submitted.

Signature

I hereby declare that what is stated herein is correct.

Dated _____ 19 _____ .

Signature

4. No claim to any refund of Indian Income-tax under this Notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the State Income-tax was recovered whichever is later.

5. Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under this Notification or to the amount of refund allowed, may appeal to the Assistant Commissioner.

6. The appeal shall be presented within thirty days of receipt of the intimation of the refusal to grant a refund or of the amount of refund allowed.

7. The appeal shall be in the following form:—

Form of appeal against an order refusing to grant a refund under the Notification of the Government of India in the Finance Department (Central Revenues) No. 25—Income-tax dated the 1st July 1926.

To

The Assistant Commissioner of

The day of 19 .

The petition of of

post office district sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under the Notification of the Government of India in the Finance Department (Central Revenues), No. 25—Income-tax, dated the 1st July 1926 of Rs. .

The Income-tax Officer has by his order, dated the of which a copy is attached refused to grant a refund granted a refund of only Rs. .

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund applied for may be granted.

Signed.

Grounds of Appeal.

Form of verification.

I, the petitioner named above in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

SCHEDULE E.

- | | |
|-----------------------|----------------------|
| 1. Baroda. | 8. Loharu. |
| Madras States Agency. | 8-A. Maler Kotla. |
| 2. Travancore. | 8-B. Mandi. |
| 2-A. Cochin. | Bombay. |
| Central India Agency. | 9. Sachin. |
| 3. Dhar. | 10. Akalkot. |
| 3-A. Makrai. | 11. Phaltan. |
| Punjab State Agency. | 11-A. Chhota Udepur. |
| 4. Patiala. | 11-B. Ramdurg. |
| 5. Bahawalpore. | 11-C. Kolhapur. |
| 6. Jind. | 11-D. Sangli. |
| 7. Kapurthala. | |

United Provinces.	21. Korea.
12. Benares.	22. Nandgon.
Eastern States Agency.	23. Chhuikhadan.
13. Baster.	24. Mayurbhanj.
14. Kanker.	24-A. Patna.
15. Raigarh.	24-B. Sonpur.
16. Jashpur.	24-C. Kalahandi.
17. Sarangarh	24-D. Rairakhol.
18. (Omitted.)	24-E. Baudh.
19. Kawardha.	Punjab.
20. Khairagarh.	25. Baghat. ¹

Relief from double tax of incomes taxed in British India and Ceylon.—As a result of the introduction of income-tax in Ceylon with effect from 1st April 1932, arrangements have been made with the Ceylon Government for the grant of relief in cases where the same income has been subjected to Ceylon tax as well as Indian income-tax. Relief is granted in India to the extent of half the Ceylon tax calculated on that part of the income on which relief is admissible under the Ceylon Income-tax Law or half the Indian income-tax on the same part of the income, whichever is less. It will be observed that relief is based on amounts of tax, not on rates of tax. The notification prescribing the procedure to be followed by persons claiming relief from double income-tax is reproduced below :—

FINANCE DEPARTMENT (CENTRAL REVENUES)

Notification No. 14, dated the 2nd April 1932.

In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), the Governor-General in Council is pleased to make the following modifications in respect of income-tax in favour of income on which income-tax has been charged both in British India and in Ceylon namely :—

(1) In this notification—

(a) the expression "Ceylon tax" has the meaning assigned to it in section 45 (4) (b) of the Ceylon Income-tax Ordinance, 1932 (2 of 1932),

¹ I. T. Manual, para 124.

- (b) The expression "Indian income-tax" has the meaning assigned to it in clause (a) of section 49 (2) of the Indian Income-tax Act, 1922 (XI of 1922).

(2) 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 Ceylon tax for the corresponding year in Ceylon, he shall be entitled to the refund of a sum equal to half the Ceylon tax calculated on that part of his income on which relief is admissible under the Ceylon Income-tax Law, or to half the Indian income-tax on the same part of his income, whichever is less: Provided that where any person is entitled to a further relief in British India on that part of his income on which relief is admissible under the Ceylon Income-tax Law on account of its having been also taxed in some other country besides Ceylon, the relief in respect of the Ceylon tax shall not exceed the difference between half the Indian income-tax and such further relief as may have been granted in British India owing to that part of his income having been taxed in some other country besides Ceylon.

(3) Every application for refund of income-tax under this Notification shall be made to the Income-tax Officer of the district in which the applicant is chargeable directly to income-tax or if he is not chargeable directly to income-tax to the Income-tax Officer of the district in which the applicant ordinarily resides, or if he is not resident in British India—

- (i) to the Income-tax Officer of the district or area in which he was last charged directly to income-tax when so resident, or
- (ii) if he has never been so resident, to the Income tax Officer of the district or area where the income-tax for the refund of which application is made was deducted.

Such application may be presented by the applicant in person or by a duly authorized agent or may be sent by post, and shall be in the following form :—

*Application for relief from double income-tax under Notification
No. 14, dated 2nd April 1932.*

I, _____ of _____ do hereby state that I have paid Ceylon tax amounting to Rs. _____ for the year ending 19____, on an income of Rs. _____ and that Indian income-tax/ income-tax and super-tax of Rs. _____ has also been paid on the same income/ part of the same income

amounting to Rs. . I now pray for relief of a sum of Rs. under
 Notification No. 14, dated 2nd April 1932 to which I am entitled. My
 income from all sources to which this Notification applies during the "pre-
 vious year" ending on the 19 ,
 amounted to Rs. only—see Return of income attached/already
 submitted.

Signature

I hereby declare that what is stated herein is correct.

Signature,

Dated

19 .

(4) No claim to any refund of income-tax under this Notification shall be allowed unless it is made within one year from the last day of the year in which such tax or the Ceylon tax was recovered whichever is later.

The following points should be borne in mind in regard to the grant of relief in British India in respect of income taxed in British India and in Ceylon.

A.—TAX.

It should be remembered that:—

- (1) Under section 45 (4) (b) (1) of the Ordinance, "Ceylon Tax" does not include, for purposes of relief either in India or Ceylon, the additional 2 per cent. charged on non-resident companies under section 20 (6) of the Ordinance.
- (2) "Ceylon Tax" does not include, for purposes of relief either in British India or Ceylon, tax on interest or other charges on income included in the Ceylon assessment (Ordinance section 45 (4) (b) (ii).
- (3) "Indian Tax" includes personal Super-tax, both in India and Ceylon.
- (4) "Indian Tax" in India includes Company Super-tax as regards companies themselves, but not as regards shareholders. Ceylon will adopt the same basis.
- (5) Any person objecting to a refusal of an Income-tax Officer to allow a claim to a refund under this Notification or to the amount of refund allowed, may appeal to the Assistant Commissioner.

(6) The appeal shall be presented within thirty days of receipt of the intimation of the refusal to grant a refund or to the amount of refund allowed, may appeal.

(7) The appeal shall be in the following form :—

Form of appeal against an order refusing to grant a refund under the Notification of the Government of India in the Finance Department (Central Revenues) No. 14—Income-tax, dated the 2nd April, 1932.

To

The Assistant Commissioner of

The day of 19 .

The petition of of post office

district sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under the Notification of the Government of India in the Finance Department (Central Revenues), No. 14—Income-tax, dated the 2nd April, 1932 or Rs. . The Income-tax Officer has by his order, dated the of which a copy is attached refused to grant a refund
granted a refund of only Rs.

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund applied for may be granted.

Signed.

Grounds of Appeal.

Form of verification.

I, the petitioner named above in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

B—"PART OF HIS INCOME" (India).

"HIS INCOME FROM ANY SOURCE" (Ceylon).

Relief of half the smaller tax (both countries).

(1) As the British India Notification No. 14 (Finance Department—Central Revenues), dated the 2nd April, 1932, is drafted, relief is to be allowed in British India "on that part of the income on which relief is admissible under the Ceylon Income-tax Law." The practical result of this is that the expressions "part of his income" in the Indian Notification and "his income from any source" in the Ceylon Ordinance, refer to

the same thing, and the British Indian relief is automatically regulated by the Ceylon relief.

The British Indian and Ceylon authorities alike will ignore in granting relief all differences between the computation of the income in the two countries due to—

- (a) Certain expenses being allowed in one country and not in the other.
- (b) The allowances for depreciation being higher in one country than in the other.
- (c) Depreciation being carried forward in one country and not in the other.
- (d) Losses being carried forward in one country and not in the other.
- (e) The fact that assessment is made on the "income arising" in one country and on "remittances" in the other.
- (f) The fact that the assessments are based on different accounting periods in the two countries.
- (g) Where a Tea Estate is taxed on 40 per cent. of its profits in British India and on the whole profits in Ceylon, there will be only one source of income from the Ceylon point of view and the relief allowed in each country will be half the lower amount of tax ignoring this difference in the basis of assessment.

(2) No relief can be given unless tax is paid for the same year in each country on the source in question, e.g., in the first year of a business, tax will be levied on its profits in Ceylon but not in British India : in the year after a business ceases, its profits will be liable to tax in British India but not in Ceylon. No relief can be given in these cases.

C.—" ANY PERSON."

(1) In Ceylon, the income of married women is treated as that of their husbands. If the wife is separately assessed in British India, on the same income she will be entitled to relief in British India.

(2) Partnership.—Ceylon charges tax on individual partners and not on partnerships at all. No difficulty will arise in British India in regard to registered Firms. If partners of an unregistered firm are assessed in

Ceylon and the firm is assessed in India, the partners will be entitled to relief in British India and direct assessments should be made on them for the purpose.

SHAREHOLDERS.

(1) A resident in India has dividends from a Company in Ceylon from which Ceylon tax is deducted at source. He is assessed in India on those dividends, as may in certain circumstances happen.

He will be entitled to relief in India.

(2) A resident in Ceylon is a shareholder in an Indian company and is taxed on its dividends in Ceylon. The company is taxed only in India. Ceylon will regard him as having suffered Indian tax indirectly. He will be entitled to relief in India.¹

Section 49 was added by Income-tax Amendment Act XXIX of 1934.

Rule 40. An application for refund of income-tax under section 49 of the Act shall be made
P. 120. in the following form :—

Application for relief from double income-tax under section 49 of the Indian Income-tax Act, 1922.

I, _____ of _____, do hereby state that I have paid United Kingdom income-tax and super-tax amounting to £ _____ for the year ending 19 _____ on an income of £ _____ and that the Indian income-tax/income-tax and super-tax of Rs. _____ has also been paid on the same income, income from the same source amounting to Rs. _____. I have obtained relief under the provisions of section 27 of the English Finance Act, 1920, at the rate of _____ see attached certificate from the Inspector of Taxes _____. I now pray for a further relief at the rate of _____ amounting to Rs. _____ under section 49 of the Indian Income-tax Act, 1922, to which I am entitled. My income from all sources to which this Act applies during

¹ I. T. Manual, para 125.

Refund in special cases—Prior to the passing of the Indian Income-tax (Second Amendment) Act, 1933, the Act did not provide for a refund where through death, incapacity, bankruptcy, liquidation or other cause a person could not receive it or claim it. It has now been enacted that under such circumstances an executor, administrator or other legal representative, or the trustee as the case may be, is entitled to receive such refund or to make such claim for the benefit of such person or his estate. This applies to all kinds of refunds whether under section 48, 48-A or 49.

As regards the procedure to be followed in applying for refunds, see paragraphs 116 and 117.¹

As regards the right of appeal against an order of an Income-tax Officer refusing to grant the refund see paragraph 127.¹

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 (11) 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.

P. 126.
Limitation of claims for refund. of

History.—The words "or before the last day..... period" were added by the Income-tax (Second Amendment) Act XXII of 1930.

Limitation of claims for refund.—Claims for refund are admissible if made within 12 months from the last day of the calendar year in

¹ I. T. Manual, para 118.

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 section 2 (11) of the Act in which the income arose on which the tax was recovered, whichever period may expire later. This limitation applies also to refunds of double income-tax (Section 49). The date of recovery in this case is, of course, the date of recovery of the tax in India. Since however there is often very great delay in settling assessments and claims to relief in the United Kingdom, provisional claims for double income-tax relief unsupported by proof that relief has actually been obtained in the United Kingdom may be accepted if presented within the limitation period if the assessee definitely undertakes to produce such proof as soon as relief in the United Kingdom has actually been obtained. When this undertaking is punctually fulfilled the claim may be treated as one presented in due time. Claims to refund under section 49 may also be admitted after the expiry of the prescribed period, if the applicant satisfies the Commissioner, or an Assistant Commissioner specially empowered in this behalf, that he had sufficient cause for not making the claim within the period.

This section should be interpreted as illustrated below in dealing with claim for refund of tax on dividends. Taking the case of a shareholder in a company which declares a dividend in January 1929, if he is directly assessed and is a person who does not keep accounts, or whose "previous year" is the income-tax year, an adjustment can be made whenever he is assessed in the income-tax year April 1929 to March 1930, while an application for a refund can also be entertained at any time up to 31st December 1930. If he keeps accounts and his "previous year" runs, say, from October to September, an adjustment can be made in the course of assessment during the financial year 1930-31. An application for refund can also be entertained up to the 31st March 1931. Where the shareholder keeps accounts on the cash basis, the relevant date is the date of receipt and not the date of declaration, and the foregoing instructions have to be read subject to this modification.¹

The words "tax was recovered" mean "tax was received by the Government." The word "recovered" does

¹ I. T. Manual, para 126, pages 288-289.

not refer to the repayment of refund of tax in United Kingdom.¹

Section 50 precludes a claim for refund of a tax if under section 48 (1) if made after the expiry of the period prescribed by this section.²

Where the shareholder of a company applied under section 48 (1) for refund of tax recovered on dividends declared by the Company, after the date of declaration of dividend and contended that tax on dividends was to be taken as recovered when tax on company's profits was paid to the Income-tax Officer, held, that the words "year in which the tax was recovered" in section 50, refer to the year in which the company concerned declares a dividend and not the year in which it pays tax to the Government on the profits out of which the dividend is paid, and that application for such refund, therefore, should be made within one year from the date of the declaration of dividend.

Held, also, that income-tax is "recovered" when the dividend is paid.³

The word "year" in section 50 means "financial year" as regards assessee who maintain their accounts according to financial year or those who do not maintain accounts.⁴

¹ Messrs. Binny & Co. Ltd. (London) by Agents & Messrs. Binny & Co., Madras v. The Commissioner of Income-tax, Madras, A. I. R. 1927 Madras 1039; 2 I. T. C. 466.

² Adamjee Haji Dawood, 1935 I. T. L. J. page 325.

³ Amirat Lal K. Gandhi v. Commissioner of Income tax, Bombay, I. T. C. 48.

⁴ Binny & Co. Ltd. v. Commissioner of Income-tax, 2 I. T. C. 466; Bai Chambhai Kanga v. The Commissioner of Income-tax, Bombay, 3 I. T. C. 77.

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

P. 127.

Appeal against refusal of refund.

(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.

R. 21-A.

(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.

History.—Section 50-A was inserted by the Indian Income-tax (Second Amendment) Act XVIII of 1933.

This section gives a right of appeal against an order refusing a refund or allowing a refund of an amount lesser than that claimed by the assessee.

Appeals against refusal to grant refunds.—Section 50-A gives a person aggrieved by an order of an Income-tax Officer refusing to allow a refund or granting a refund of an amount less than what he has claimed under section 48, 48-A or 49, the right to appeal to the Assistant Commissioner against such order. The appeal should be presented within 30 days of the date on which the order was communicated to him. The appeal should be in the form prescribed for the purpose and verified in the prescribed manner. Before passing any order on such appeal the Assistant Commissioner should give the assessee an opportunity of being heard.¹

¹ I. T. Manual, para 127, p. 289.

Rule 21-A. An appeal under section 50-A shall be in the following form :—

Form of appeal against an order refusing to grant a refund under Section 48, 48-A or 49.

To

The Assistant Commissioner of

The day of 19 .

The petition of of

post office, District sheweth as follows :—

Your petitioner applied to the Income-tax Officer for a refund under section 48/48-A/49 of the Indian Income-tax Act, 1922, of Rs. . The Income-tax Officer has by his order dated the of which a copy is attached rejected the application granted a refund of only Rs.

Your petitioner therefore requests that the order of the Income-tax Officer may be set aside and the refund asked for may be granted.

Signed

Grounds of Appeal.

Form of verification.

I, , the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

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—

P. 76, 90.

(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 (g) of section 18 or by section 20 to be furnished;

P. 83, 88.

S. 1, 85, 86,

(c) to furnish in due time any of the returns mentioned in section 19-A, section 20-A, 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 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.

History—The words "Section 19-A" were added by the Income-tax Amendment Act XXIIV of 1926, and the words "Section 20-A" by the Income-tax Amendment Act XVIII of 1933.

Difference between Sections 51 and 52.—The offence in section 52 is of a different nature from the offence under section 51. An assessee cannot be convicted of any offence under section 51, when a charge under section 52 is found to be untenable.¹

An important element in an offence under section 51 is want of “reasonable cause or excuse.” There can be no offence under this section when this element is lacking.

Inaccurate or invalid return.—A return may be complete and valid, or it may be incomplete or invalid. An incomplete return is all the same a return and does not expose the assessee to a prosecution under section 51. But an invalid return is no return and proceedings under this section can be taken about it.²

Penalty under section 28 and Prosecution.—A penalty under section 28 is only a bar to a prosecution for the same head, but that section is no bar to a prosecution under a different head. Penalty under one head can be legally levied while prosecution may be started under another head.³

52. If a person makes a statement in a verification mentioned in section 19-A or section 20-A or section 22, or sub-section (2) of section 26-A or sub-section (3) of section 30 or sub-section (2) of section 32 or sub-section (2) of section 33-A or sub-section (3) of section 50-A which is false, and which he either knows or believes to be false, or does not believe to be true, he

False statement
in declaration.

P. 87, 101.

XLV of 1860.

¹ Champalal Girdhari Lal v. King Emperor, A. I. R. 1933 Nag. 358; 7 I. T. L. J. page 299; A. I. R. 1933 Nag. 358.

² Lord Advocate v. A.B., 3. I. T. C. 617.

³ *In re Hussain Ally*, 43 Mad. 498.

shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

History.—The words “section 20-A.....26-A” were added by the Indian Income-tax (Second Amendment) Act XVIII of 1933 and the words “or section 27.....50-A” were inserted by the Income-tax Amendment Act XXI of 1930.

Scope.—Certain returns and memoranda are required to be verified. This section penalises false verification in such cases. The section requires three conditions for an offence to be made out : (1) making a statement in a verification mentioned in sections enumerated in this section, (2) falsity of the statement, and (3) knowledge on the part of the person making the statement that the same was false or want of belief in the truth of the same.

A return for the purposes of section 52 means a complete return. The verification of a return which is incomplete or invalid does not constitute an offence. Thus where an assessee while ostensibly and openly stated that the return was not complete, it was held that its verification was not such as to make the return valid or constitute the commission of an offence.¹

Filing of a revised return.—There is nothing in section 22 (3) to give support to the view that a person cannot be prosecuted under this section for making a false verification in a return simply because he files a subsequent revised return which is correct. All that section 22 (3) provides is that the subsequent revised return shall be treated as a return made in due time, but the person having made a

¹ *In re Ganga Sagar*, 4 I. T. C. 97; *Champalal Girdhari Lal v. K. Emperor*, 7 I. T. L. J. page 299; A. I. R. 1933 Nag. 358.

false verification in the original return is liable to a prosecution under section 52.¹

Reference to High Court.—The question, whether after filing of a revised return the assessee can be deemed guilty under section 52 of the Income-tax Act, cannot be referred to the High Court under section 65 of the Act, section 52 falling within Chapter VIII, which is excluded by section 66, and no reference be made to the High Court on any question arising out of an order under section 52 passed by an Assistant Commissioner, whether the order is contained in the order in appeal, or whether it is in a separate proceeding.

Where certain investments stand recorded in the name of the assessee and they allege that it was invested on behalf of their sister, the burden of proof lies on them to establish the fact and that it is open to the Income-tax Officer, as a matter of law, to hold that the evidence produced by the assessee was insufficient.²

Assessment by one Income-tax Officer—complaint by his successor.—Where the assessment is made by one Income-tax Officer but the complaint under section 52, Income-tax Act, is filed by his successor-in-office, the complaint is validly filed. The “public servant concerned” in such a case is the Income-tax Officer whose duty it was to make assessments for income-tax in the particular section of area in which the assessment of the appellant was made.³

¹ *In re Ganga Sagar*, 4 I. T. C. 97; A. I. R. 1927 All. 919.

² *Narain Das Mohan Lal v. Commissioner of Income-tax U. P.*, A. I. R. 1933 All. 231; 6 I. T. C. 248; 7 I. T. L. J. page 102.

³ *P. D. Patel v. King Emperor*, 7 I. T. L. J. page 359; A. I. R. 1933 Rang. 292.

Civil Suit.—Assessee, the Raja of Ramanand, submitted a return of his income, showing his income from forests and fisheries also in it. He was assessed thereon, though his was a permanently settled estate and thus outside the scope of the Income-tax Act, by reason of the Permanent Settlement Regulation XXV of 1902 and the Sanad issued under the Act. He paid the tax and claimed to recover the same in a civil suit.

Held, that the income in question was exempt from taxation by the government and that section 3 of the Income-tax Act did not abrogate the exemption.¹

Held, further, that if an assessment was made in respect of an item of income which was not assessable under the Act, a civil suit would lie to recover it inasmuch as the officer making the assessment had no jurisdiction to make it, that where a certain income is outside the scope of the Act, such as agricultural income or income not earned in or brought into British India, any assessment in respect of it would be beyond the scope of the Act and a civil suit to recover it would not be barred by section 52.

Held, also, that where the assessee, in his return of income, mistakenly thinking that he was liable, included income, which was exempt, and on assessment, paid the amount of tax levied, while he could have objected to the assessment legally, or even could have refused payment, there being no duress, nor threat to pay the tax, and the payment being voluntary, the amount could not be recovered by a suit.²

¹ 1 I. T. C. 181 (F.B.) foll. 1 I.T.C. 284; 2 I.T.C. 221 and 2 I. T. C. 392 Expl.

² Raja Rajeshwar Sethupathi v. The Secretary of State for India in Council, 3 I. T. C. 263; A. I. R. 1929 Mad. 179.

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.

P. 87, 128.

Prosecution to be at instance of Assistant Commissioner.

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

Prosecution for offences. (See also paragraph 87.)—Prosecution of assessees for offences under sections 51 and 52 cannot be commenced except at the instance of an Assistant Commissioner and the Assistant Commissioner is, under section 53, empowered to stay any such proceedings or compound any such offence. The power of compounding an offence is one that can be exercised not only after proceedings have been commenced, but before proceedings are instituted at all.¹

Magistrate.—The offence of false verification is committed at a place where the false verification is made. The offence can therefore be tried by a magistrate within whose territorial jurisdiction the false verification was made and not a magistrate within whose jurisdiction the return was filed or received and the assessment made.²

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

P. 9, 129.

Disclosure of information by a public servant.

I of 1872.

¹ I. T. Manual, para 128.

² *In re Mohideen Markkayar*, 1 I. T. C. 193; I.L.R. 45 Mad. 839.

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 this 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
10 & 11 Gen United Kingdom, as may be necessary to
5c. 18. 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 26-A, 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.

Income-tax records to be kept confidential—While the Act of 1918 merely penalised the disclosure by a public servant of the particulars contained in any statement or return furnished under the Act, section 54 further penalises the disclosure of any particulars contained in any accounts or documents produced under the Act or in any evidence given or deposition made in the course of proceedings under the Act or in any record of an assessment proceeding or proceedings for recovery of a demand, and debars the Courts from requiring public servants to produce income-tax records or to give evidence respecting the same.

The provisos to sub-section (2) contain provisions stating in what particular cases information may be disclosed. The effect of the provisions is that information obtained in connection with the assessment of incomes and recovery of the tax may be disclosed by public servants to such persons only as act in the execution of the Act and where it may be necessary to disclose the same to them for the purposes of the Act, or in order to, in the course of, a prosecution for perjury committed in connection with proceedings under the Act. The production before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition

made in a proceeding under section 26-A, or the giving of evidence by a public servant in respect thereof is also not prohibited. Proviso (c) was inserted mainly for the purpose of extending the protection to every action of a public servant in pursuance of the provisions of the Act or the rules such as the service of a notice by affixture. Proviso (cc) authorises the disclosure of any particulars contained in an Income-tax record which is occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, to impound an insufficiently stamped document. Apart from these particular cases it is essential that all records should be kept strictly confidential, and in particular, the practice in certain provinces of furnishing information to local authorities, who impose a tax on "circumstances and property" or a local income-tax, of the details of assessment made by the income-tax authorities must cease. This prohibition applies equally to furnishing such information to other Government departments.

For the meaning of the phrase "public servant" see paragraph 9.¹

The clear intention of section 54 is to encourage the assessee to make a full true disclosure of all relevant facts within his knowledge knowing that any statement made by him will not be used against him in any subsequent proceedings except those mentioned in that section. The statements made are subject to such exceptions, absolutely privileged and an assessee can refuse to answer any interrogatories on statements made by him in income-tax proceedings.² Nor are copies of such returns admissible in evidence.³ The provisions of section 54 are wide enough to exclude evidence to the effect that account books have been produced before the Income-tax Officer.

The defendant made an attempt to summon a member of the income-tax collection staff with a view to show that

¹ I. T. Manual, para. 129, pages 289-290.

² *Shamarao & another v. Motiram and others*, A. I. R. 1934 Nag. 181; 8 I. T. I. J. page 120 (1934).

³ *In re Anwarali v. Tafazul Ahmad*, A. I. R. 1923 page 64; 1 I. T. C. 277.

Gurdit Chand had at one time produced books of account before the income-tax authorities. The Commissioner of Income-tax refused to provide the necessary facilities, claiming privilege under section 54, I. T. Act 1922. Under this section, no Court may require any public servant to produce before it any documents produced before the income-tax authorities under the provisions of the Act, nor may it require him to give evidence before it in respect thereof. It is to be noted that the Act does not merely exclude evidence with regard to the contents of any documents which may be produced before the income-tax authorities for purposes of assessment, but it forbids any evidence with regard to such documents. This provision is wide enough to exclude evidence to the effect that account books have been produced before the Income-tax Officer, and that the interpretation placed on the section by the Commissioner of Income-tax was correct.¹

Chapter IX

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 Indian Legislature.

P. 2, 10, 11, 12, 130.
Charge of super-tax.

¹ Asghar Ali Shah v. Achru Mal, 1935 I. T. L. J. page 196.

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.

P. 71, 130.

Super-tax.—The provisions of the Act regarding income-tax other than those specially excepted in section 58 apply also to super-tax which is merely, as stated in section 55, "an additional duty of income-tax." Super-tax is levied at the rates specified in the Finance Act.

The super-tax on companies is levied at a flat rate on the whole of the profits of a company. This tax on companies, which takes the place of the tax formerly levied at a graded scale of rates on the "undistributed profits" of a company, is levied on the company as such on account of the special privileges which companies enjoy by statute in the shape of corporate finance and limited liability. No refund on account of super-tax on companies is, therefore, allowed to shareholders.

Apart from the tax on companies which stands in a class by itself, super-tax is levied on a scale of graduated rates. While in the case of income-tax the different rates are applied to the whole of an assessee's income, the different rates of super-tax are levied on successive "slices" of income, *i.e.*, on the portions of an assessee's income in excess of certain limits or the portions lying between certain limits.

Hindu undivided families are treated for purposes of super-tax, as for income-tax purposes, as separate assessees.

Unregistered firms are also treated as separate assessees. Where, however, an unregistered firm itself is not assessed to super-tax (*e.g.*, if its assessable profits are less than Rs. 30,000), in that case only is the income which any individual member of an unregistered firm receives from the firm included in his total income for super-tax.

Registered firms are not assessed to super-tax, but the shares of partners in registered firms are included in the total income of the individual partners on which super-tax is levied and similarly the dividends of shareholders received from companies are included in the individual income of those shareholders.

The tax is levied on "total income" and "total income" in all cases means exactly the same thing as total income calculated for income-

tax purposes with the solitary exception that where an unregistered firm is itself assessed to super-tax, the share of the profits of a member of the unregistered firm is excluded from his total income for super-tax purposes.¹

History.—The word, “individual Hindu.....on” were added by the Income-tax Amendment Act XI of 1924.

Demand Notice.—No form is prescribed for a notice of demand of super-tax and it appears that a single demand notice demanding both income-tax and super-tax would be sufficient.

Previous Year.—See notes to section 42(k).

Total Income.—See notes to section 2 (15) and section 16. Total income for the purposes of super-tax is the same as it is for income-tax.

Individual.—The word individual in proviso to section 55 has been used in a slightly wider sense than the word used in the section itself and includes a Hindu undivided family.² But see *Raja Shiva Prasad Singh and another*,³ where a contrary view seems to have been expressed.

An impartible estate may be owned by a Hindu undivided family and the holder of such an estate may be the head or managing member of the family. There is no legal sanction for the proposition that an estate which is governed by the rule of primogeniture cannot belong to an undivided family but must be the sole property of the person who has succeeded to it by the rule of primogeniture. Accordingly, where the holder of an impartible estate is the head of an

¹ I. T. Manual, para 130.

² *Messrs. Ram Ratan Das Madan Gopal v. Commissioner of Income-tax*, U. P. 1935 I. T. L. J. page 51.

³ 1 I. T. C. 384; 4 Pat. 73.

undivided family, the taxable limit for super-tax is that fixed for a Hindu undivided family and not that of an individual.¹

Association converted into a registered company.—When an unincorporated association is converted into a registered company, the tax will be levied on the company at the rate applicable to the company although the tax will be assessed on the income of the previous year.²

Super tax whether Payable on Dividend when already paid by Company.—Super-tax is payable on the income of companies as well as on the income of individual shareholders including the income of the latter, the dividends received from the company although they have been charged to super-tax. No exception can be claimed by the assessee from the payment of super-tax in respect to the dividends recovered by him.³

Partnership—Proof of—Assessee, four brothers of a joint Hindu family, hitherto treated and assessed as joint Hindu family, filed with their return of income for 1924-25, an application for registration of their firm under Rule 2 of Income-tax Rules and enclosed a partnership deed purporting to have been drawn on March 25th, 1924. The Income-tax Officer, disbelieving them, assessed them to super-tax. In reply to notice issued to them they filed affidavits and a member of the family gave statement supporting them.

Held, that, while, no doubt, it was open to the Income-tax Officer, with reference to the earlier point of time, to find

¹ Krishan Kishore v. Commissioner of Income-tax, Punjab, 7 I. T. L. J., page 177; 6 I. T. C. 345.

² Commissioner of Income-tax v. Western Tariff Club, 52 Bom. 123 P. C.; A. I. R. 1926 Bom. 539; A. I. R. 1928 P. C., page 1.

³ Maharaja of Darbhanga v. Commissioner of Income-tax, Bihar and Orissa, 3 Pat. 470; A. I. R. 1924 Pat. 474; 1 I. T. C. 303.

that a divided status had not been proved, it was clear that on that date, at any rate, when this evidence was before the Income-tax Officer the brothers had become divided in status by reason of their declarations to that effect set out in the documents above mentioned.¹

Partnership between husband and wife.—There is nothing to prevent the existence of a partnership between husband and wife. Where by a deed of partnership, one Ambalal and his wife were described as partners of a certain business, it was held that business constituted a firm and was separately liable to super-tax as an unregistered firm.² There is no presumption that a property standing in the name of a married Hindu lady does in fact belong to her husband. Accordingly, income in the hands of a woman which has come to her in her own capacity cannot be assessed to income-tax in the name of her husband, unless there is evidence to show that she is a benamidar.³

One man company—The assessee started four companies. Practically he owned all the shares and had full control over the companies. No business except recovering dividends and debiting them in the assessee's accounts as a loan was ever transacted. It was held that "the court can go into the question as to whether the so-called one-man company is really a business carried on by the assessee himself for the purposes of avoiding payment of tax. The company was not a genuine company at all but merely the assessee himself, disguised under the legal entity of a limited

¹ O. L. K. K. N. Kannappa Chettiar and other v. Commissioner of Income-tax, Madras, 2 I. T. C. 381.

² *In re* Ambalal Sarabhai, A. I. R. 1934 Bom. 82.

³ Ramkinkar Banerji v. Commissioner of I. T., Bihar and Orissa, 1936 I. T. L. J., page 110.

liability company. The company was formed by the assessee purely and simply as a means of avoiding super-tax and that the company was nothing more than the assessee himself. It did no business but was created purely and simply as legal entity to ostensibly receive the dividends and interest and hand them over to the assessee as pretended loans."

It was held that the profits received by the assessee were liable to super-tax as his individual income.¹

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.

History.—The words "individual.....individuals" were inserted by the Income-tax Amendment Act XI of 1924.

Estate of deceased person.—Formerly there was no provision for the assessment to income-tax of the estate of a deceased person² and it was held in 31 C. W. N. 630 noted above, that where the surviving members of a firm pay any super-tax in respect of the profits of a deceased partner the payment shall be considered to be voluntary and hence no refund could be claimed.

¹ *In re* Sir Dinshaw Maneckjee, A. I. R. 1927 Bom. 37; 102 I. C. 49.

² *In re* Mitchel v. Marneil, 31 C. W. N. 630; A. I. R. 1927 Cal. 578; *Ellis v. Reid*, A. I. R. 1931 Bom. 333.

But in view of section 24-B, these decisions are no longer of any importance.¹

57. (1) In the case of any person residing out of British India who is a member of 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.

P. 131.

Non-resident partners and shareholders.

(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.

History.—The words “another person” and person in sub-section (2) were added by the Income-tax Amendment Act XXIV of 1926, by which sub-section (1) was amended.

Deduction of super-tax at the source.—One of the exceptions to the general rule that super-tax is recovered by assessment of the person liable is that provided in section 18 (3A) to (3D) and 57. That provision is rendered necessary owing to the difficulty of obtaining income-tax and super-tax from non-residents. Section 57 (1) provides that in order to recover super-tax from the share of the profits of a partner in a registered firm, who is not resident in British India, the resident partners are themselves jointly and severally liable to pay the super-tax due from the non-resident in respect of his share. Section 18 (3A) authorises an Income-tax Officer to require the person responsible for paying interest not being “interest on securities” to deduct income-tax and super-tax at the time of payment of such interest to a non-resident, if the amount in any year exceeds the maximum amount which is not chargeable with super-tax, at

¹ See A. I. R. 1927 Cal. 378.

the rates determined by him to be applicable to the total income of such person in that year. Under section 18 (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, the person responsible for paying such interest shall, if the recipient is not known to be a resident and no order under section 18 (3A) has been received from the Income-tax Officer 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.

Section 18 (3C) authorises an Income-tax Officer to require the principal officer of a company to deduct super-tax at the rate determined by him from the dividends payable to a non resident shareholder whose total income is expected to exceed the maximum amount which is not chargeable to super-tax. This rate must be the effective or average rate of super-tax; that is to say, first the total amount of super-tax due on the total income must be calculated. Then the rate is to be arrived at by dividing this total super-tax by the total income. That rate is to be notified to all persons paying dividends and they should be required to deduct super-tax at that rate from whatever dividends they pay. These sections should not ordinarily be resorted to where the non-resident has an authorised agent in India to whom these interest payments or dividends are paid and through whom he can be assessed to income-tax and super-tax in the ordinary way under section 43 of the Act, but this section should be employed where special circumstances render it necessary, e.g., where a non-resident has resorted to some device by which such proceedings under section 43 have been rendered infructuous. Any such case should be reported by the Income-tax Officer concerned to the Assistant Commissioner of Income-tax whose orders should be taken before proceeding under this section.

Section 18 (3D) makes a principal officer or a company liable to deduct any super-tax due on dividends payable to a shareholder whom he has no reason to believe to be resident in British India. The liability - under this section and section 57 (1) merely attaches where the amount of the profits or dividends payable to the non-resident partner or shareholder together with the amount of any income-tax payable by the company or firm in respect thereof is taken by

itself liable to super-tax on the assumption that it represents the whole income of the non-resident partner or shareholder. It should be observed that if for example dividends are paid half-yearly and the combined amount of the two payments in any year and the income-tax thereon exceeds the minimum liable to super-tax though the first payment including the income-tax on it taken by itself does not exceed it, the principal officer is bound to deduct the super-tax on such excess from the second payment. The Act does not require the resident partner or the principal officer to obtain from the non-resident partner or shareholder a statement of any other income that may accrue to him in British India. Where there is reason to believe that there is such other income it will be necessary to rely on the provisions of sections 42 and 43 of the Act or section 18 (3C). In the case of companies the obligation to deduct applies only to dividends and does not apply to other sums which a non-resident may receive from the Company by way of interest on debentures or remuneration such as Director's fees. If the non-resident is himself assessed through an agent, sub-section (2) of section 57 provides that amount deducted at the source in this manner shall be taken into account in determining the amount payable by him in respect of any other income.¹

Deduction at source from dividends of non-resident shareholders.—Section 18 (3D). Sometimes large blocks of shares are registered in the names of banks, and held by them on behalf of the real owners for various reasons, though the banks have no proprietary or beneficial interest therein. The aggregate dividends on a block of shares in a single company thus held by a bank may exceed the maximum amount exempt from super-tax, though the dividends payable to some or all of the real owners individually may not exceed that amount. In such circumstances super-tax should not be deducted at source from the dividends payable to the bank irrespective of the liability of the several real owners of the shares. If, therefore, a bank in such circumstances furnishes the Income-tax Officer assessing the company from time to time with a list giving the names and addresses of the real owners of the shares and the number of shares held by each, the Income-tax Officer will inform the principal officer of the company, under section 18 (3C), of the rate of super-tax to be deducted in respect of the dividends payable to the bank,

¹ I. T. Manual, para 131.

or that no super-tax is to be deducted therefrom, as the case may be, having regard to the liability of the individual shareholders.¹

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, 58-F and sub-sections (2) and (3) of section 58-G shall apply, so far as may be, to the charge, assessment collection and recovery of super-tax.

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

History.—The words “relating to.....contained” and the words second and third “before the word proviso to section 8,” and the words “58 F.....section 58-G” and the words “and section 58-H” were added by the Income-tax Amendment Act XVIII of 1933, by which the last part of section 58 (1) was repealed. The words “sub-section (3-A).....and (3-D)” were added by the Provident Fund Relief Act XII of 1929.

Penalty and Super-tax.—There is no provision in the Income-tax Act for the levy of a penalty in respect of super-tax. Section 28 has no application to the case of super-tax.²

¹ I. T. Manual, para 132.

² Gurcharan Prasad v. Commissioner of Income-tax, U. P., A. L. J. 336.

Chapter IX-A

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUND

This chapter was inserted by the Indian Income-tax Provident Fund Relief Act XII of 1929.

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

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Definitions.

- (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.

Exemption of "recognised" Provident Funds.—Besides the Provident Funds mentioned in paragraph 23 (See notes under section 4 (3) (iv)), Provident Funds maintained by employers (Section 58-A (b)) which conform to the conditions laid down in section 58-C of the Act inserted by the Indian Income-tax (Provident Funds Relief) Act, 1929, enjoy certain privileges in respect of income-tax subject to certain conditions. The main conditions to which such Provident Funds must conform in order to secure these concessions are :—

- (1) that the funds shall be vested in two or more trustees or in the Official Trustee under an irrevocable trust;
- (2) that the employer shall not be entitled to recover any sum whatsoever from the Fund except where the employee is dismissed for misconduct or voluntarily leaves employment without adequate reasons;
- (3) that in any case such recoveries shall be limited to the contributions made by the employer himself;

- (4) that the subscriptions of the employees and the contributions by the employer shall be regular and not casual;
- (5) that the employers' contribution should not exceed the employees' subscription as a rule, and
- (6) that the employee shall be employed in India or the principal place of business of the employer shall be British India.

The income-tax concessions are :—

- (a) contributions to a recognised Provident Fund both by the employee and the employer taken together shall be exempt from income-tax but not from super-tax up to 1/6th of the employee's annual salary. In addition, an employee can obtain under section 15 (1) rebate of income-tax on insurance premia subject to the limit laid down in section 15 (3). If in any Fund the contributions made by an employee and the employer exceed the 1/6th limit, the excess contributions and the interest thereon together with the interest in excess of the prescribed maximum (at present 6 per cent.) will be liable to tax.
- (b) income on the investments held by the Fund is also exempt from income-tax;
- (c) the accumulated balance due to an employee which includes interest on contributions—is also exempt from income-tax and super-tax and is not to be included in computation of the total income, provided the employee has rendered continuous service with his employer for not less than five years. The Commissioner has also power in certain circumstances to allow the exemption even when the service rendered is less than this period.

The contributions made by an employer to the individual accounts of his employee in a recognised Fund, less recoveries if any under the provisions of section 58-C (1) (f), are to be allowed as an item of expenditure under section 10 (2) (ix) of the Act, as the Fund is an irrecoverable trust.¹

¹ I. T. Manual, para 24.

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

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The according and withdrawal of recognition.

(2) The Governor-General in Council may, at his 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.

Recognition of Provident Funds and withdrawal of recognition.—The Commissioner of Income-tax may accord recognition to any Provident Fund which, in his opinion, satisfies the conditions prescribed in section 58-C and the Indian Income-tax (Provident Funds Relief) Rules. An employer objecting to an order of the Commissioner refusing to

recognise a Provident Fund may appeal, within 60 days of such order, to the Central Board of Revenue in the form prescribed in the Indian Income-tax (Provident Fund Relief) (Central Board of Revenue) Rules.

There is no specific provision in the Act or Rules for an appeal against withdrawal of recognition by the Commissioner, but such an appeal should be allowed subject to the same conditions as are applicable to an appeal against an order of the Commissioner refusing recognition. The Government of India have reserved the power to withhold or withdraw recognition from any provident funds (Section 58-B (2)).¹

58-C. (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 Governor-General in Council may, by rule, prescribe—

P. 26, 27.

Conditions to be satisfied by a recognised provident fund.

- (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 at intervals not exceeding one year.
- (c) Subject to the provisions of section 58-D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of

¹ I. T. Manual, para 25.

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 employee 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 Governor-General in Council 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.

Conditions to be satisfied by recognised Provident Funds.—
Investment of funds.—(a) A recognised provident fund consists of contributions by employers and employees, accumulations, interest thereon and securities purchased therewith, and no other sums. So long as the "transferred balance," (Section 58-J (2)) and the employers' contributions, interest thereon, etc., are not invested, the fund will consist solely of subscriptions, accumulations and interest thereon. If any part of the fund is deposited in the employer's own concern, and the employer gives the Trustees a promissory note therefor the note may be considered to be a "security" within the meaning of section 58-C (1) (d). So far as the transferred balance of a fund is concerned, there is no restriction as to the manner in which it should be held or invested. It may be utilised in the employer's own business, or deposited in a Bank or invested in "securities" in the widest sense of the term. The same is true of the employer's contributions subsequent to recognition and the interest thereon and on the accumulations of such interest. The employees' contributions subsequent to recognition and the interest thereon and on accumulations of such interest must be invested in the securities of the nature prescribed in section 20 (a) (b), (c), (d) or (e) of the Indian Trusts Act, 1882, and payable in respect of both capital and interest in British India.

(b) A reasonable interval should be allowed to the trustees to accumulate the contributions collected before requiring their investment as above.

(c) A fund is not rendered ineligible for recognition by the fact that it can be closed or wound up at will by the employer or the Trustees, provided that it is not revocable otherwise than in accordance with section 58-C (1) (e).

(d) The fact that a fund receives donations, for example, from retiring partners, should not be held to render it ineligible for recognition.

Appreciation and depreciation in securities belonging to recognised provident funds.—(a) In certain Provident Funds it is the practice to revalue the securities held at the end of each financial year and to take the appreciation and depreciation thus ascertained into consideration before allocating to the members their share of the annual profit. This practice does not render the fund ineligible for recognition. Plus and minus entries relating to such appreciation or depreciation should be made in the remarks column of the Form of account prescribed in rule 6 of the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules (Part II of the Manual). Such appreciation or depreciation need not be taken into account in determining the rate of interest under section 58-F (2).

(b) The appreciation of securities itself cannot directly come into the computation of the employee's total income or be liable to tax at any time. Though it is a form of accumulation of contributions, it is also not income but an increase of capital.

Forfeitures to recognised provident funds.—The only amounts that an employer is allowed by the Act to recover from a recognised Provident Fund are his own contributions to the account of a dismissed employee or an employee voluntarily leaving his employment as stated in section 58-C (1) (f) and of interest on such contributions. If the rules of any fund provide for forfeitures to the employer of any other monies—for example of a dismissed employee's own contributions and the interest thereon, this provision is repugnant to section 58-C (1) (f) and renders the fund ineligible for recognition.

A provision for the forfeiture to the fund in certain circumstances (e.g., assignment of employee's interest, an employee leaving service to take employment under a rival) of so much of the amount standing to the credit of an individual employee as is in no circumstances recoverable by the employer, under clause (f) of sub-section (1) of section 58-C of the Act, does not render the fund ineligible for recognition under that subsection.

Such amounts represent accumulations of sums credited out of the employee's salary with interest thereon, and it is clear that these amounts are within the language used in clause (d) of sub-section (1) of section 58-C, read with the definition of "contribution" in clause (d) of section 58-A. The effect of clause (g) of sub-section (1) of section 58-C is not to require that so much of the balance at the credit of an individual employee as is not recoverable by the employer under clause (f) should be payable to the employee. It requires the accumulated balance due to the employee to be payable to the employee, and the definition of "accumulated balance due" in clause (g) of section 58-A expressly recognises the possibility that by the regulations of a fund any part of the balance to the credit of an employee may be excluded from the amount claimable by him and therefore from the accumulated balance due for the purposes of clause (g) of sub-section (1) of section 58-C.

While therefore recoveries by the employer are governed by clause (f) of sub-section (1) of section 58-C, forfeitures to the fund are left by the Act to be governed by the regulations of the fund, so that no provision in the regulations of the funds for the forfeiture to the fund of any part of the balance to the credit of the individual employee will render the fund ineligible for recognition.

The inclusion in the rules of a provident fund of a provision for the payment of forfeited amounts of an individual member to his wife and family does not render the fund ineligible for recognition. The definition of the expression "accumulated balance due" to an employee which is set out in section 58-A makes it plain that the amount which is payable to the employee, is not necessarily the equivalent of the total of his contributions, the employer's contributions and the interest which has accumulated thereon; and the provisions of clause (g) of section 58-C, read with this definition of the "accumulated balance due" are not inconsistent with the payment to a third party of forfeited amounts, although the circumstances in which the employer can himself take these amounts are limited by clause (b) of section 53-C.

The inclusion in the regulations of a provident fund of a provision for the forfeiture to the fund of the accumulated balance due to an employee who dies without heirs also does not make the fund ineligible for recognition. Such forfeiture to the fund does not put anything into the fund, because what is forfeited to the fund is already in

the fund. As the act of forfeiture does not put any sum at all into the fund, it cannot be held to put into the fund any sum other than the contributions, etc., specified in section 58-C (1) (d). The question of the validity of a regulation forfeiting to the fund the accumulated balance due to an employee who dies intestate and without heirs does not arise, as the existence of such a regulation, whatever it may be worth, does not affect the composition of the fund for purposes of clause (d) of sub-section (1) of the same section.

Payment of accumulated balances of recognised provident funds to employees discontinuing participation. (Section 58-C (1) (g) and (h).)—(a) If an employee who is a subscriber to a recognised provident fund, the membership of which is optional, decides to discontinue his membership of the fund while not resigning his employment, he is entitled to claim repayment of the accumulated balance at his credit, under section 58-C (1) (g), of the Act. Under section 58-A (c) of the Act, an "employee" means an employed participating in a provident fund. Thus a person who discontinues his participation in a fund "ceases to be an employee" within the meaning of section 58-C (1) (g) and is, therefore, entitled to claim payment of the accumulated balance due to him.

A private provident fund, participation in which is optional, is not qualified for recognition unless the rules confer on the participants the right to receive payment of the accumulated balance whenever participation is discontinued.¹

Recognised Provident Funds of business with principal place out of India. (Section 58-C (1) (a).)—If a concern has its principal place outside British India, the Provident Fund of the employees of its British Indian business, if it is to be "recognised," should be kept separate and must conform to the conditions imposed by the Act and the Rules thereunder. The expression "all employees" occurring in section 58 C (1) (a) refers to "all employees subscribing to the Fund" and not to all employees of the particular employer. If a concern has its principal place of business in British India, there is no objection to the foreign staff—that is the staff outside British India—subscribing to the Provident Fund. They will not get any rebate of tax on the monthly contributions since their salaries having been earned outside British India will not be

¹ I. T. Manual, para 26,

taxed but they will get the advantage of the exemption from income-tax of the interest on the investments of the fund.¹

58-D. Subject to any rules which the Governor-General in Council 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 58-C—

P. 26.

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

- (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.

See notes to section 58-C.

58-E. 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 58-F, 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

¹ I. T. Manual, para 27,

employee's own contributions shall be included in his total income.

58-F. (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.

Exemption of annual accretion from income-tax.
P. 11, 23, 28, 29.

(2) In the accounts of a recognised provident fund, the contributions exempted from income tax under subsection (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 Governor General in Council may, by notification in the Gazette of India, fix in this behalf.

Interest on accumulated balances in recognised provident funds. (Section 58-F.)—(i) Interest on accumulations in recognised provident funds is exempt from income-tax but not from super-tax up to a rate to be fixed by Government which is 6 per cent at present. In some funds a provisional rate of interest is allowed to the employees in the first instance and the difference between the interest actually earned by the fund and the provisional rate so allowed is distributed between the employees on a basis which has some regard to the length of the service of the employees. In such cases, the interest credited to the individual accounts should be exempted in so far as the average interest earned by the fund as a whole does not exceed the prescribed rate of interest.

(ii) Interest on sums credited to an employee's account in a recognised Provident Fund, which sums represent his share of the appreciation in the value of the securities held by the Fund, is to be regarded as interest within the meaning of sections 58-A (f) and 58-C (1) (d),¹

¹ J. T. Manual, para 28.

Interpretation of "salary" in relation to recognised provident funds.—That the expression "salary" as used in Chapter IX-A of the Act does not embrace everything taxable under the head "salaries" in accordance with sub-section (1) of section 7, is obvious from clause (b) of sub-section (1) of section 58-C read with clause (b) of section 58-D. For the purposes of Chapter IX-A, "salary" includes so much only of an employee's remuneration as is of a specific monetary amount and is payable periodically. It includes "salary" (in the more general sense in which that expression embraces "wages") which is received by any category of employees other than those excluded in clause (c) of section 58-A.¹

As to the meaning of the word "total income" see notes to section 2 (15).

Also see notes to section 4 (8) (iv) and 4 (3) (v).

FINANCE DEPARTMENT (CENTRAL REVENUES)

NOTIFICATION No. 10, DATED THE 15TH MARCH, 1930.

In pursuance of sub-section (2) of section 58-F of the Indian Income-tax Act, 1922 (XI of 1922), the Governor General in Council is pleased to fix six per cent. as the rate referred to in the said sub-section.

58-G. (1) Where the accumulated balance due to an

P. 23.

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

XVIII of 1933.

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 58-E 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

¹ I. T. Manual, para 29.

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 58-F, 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.

Section 58-G was inserted by the Income-tax Amendment Act XVIII of 1933.

See notes under section 4.

58-H. 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 58-G, and any

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

income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 58-J, 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."

58-I. (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.

P. 30.

Accounts of recognised provident funds.

(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.

Accounts of recognised provident funds.—The accounts of recognised provident funds are to be maintained in the form prescribed in the Indian Income-tax (Provident Fund Relief) (Central Board of Revenue) Rules. If a concern has several branches, the annual abstracts of the provident funds accounts should be sent by the employer to all Income-tax Officers who are responsible for assessing the employees.

The accounts to be made under the provisions of section 58-J must show in respect of every employee the particulars given in rule 8 of the Indian Income-tax (Provident Fund Relief) (Central Board of Revenue) Rules.¹

58-J. (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

P. 30.

Treatment of balances in newly recognised provident funds.

¹ I. T. Manual, para 30.

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 58-C, 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.

See notes under section 58-I above.

58-K. (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.

P. 31.

Treatment of fund transferred by employer to trustee.

(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.

Treatment of a fund transferred by employer to trustees.—

Any sum transferred by an employer before coming into force of the Indian Income-tax (Provident Funds Relief) Act, 1929, to the Provident Fund of his employees which has been converted into an irrevocable trust in a permissible deduction in assessing the profits of the employer. Sub-section (1) of section 58-K operates with reference to any assessment made after the coming into force of the Provident Funds Relief Act XII of 1929 whenever the conditions necessary to its operation are satisfied. The conditions necessary to its operation are that it can be predicated of the employer :—

- (a) that he maintains a Provident Fund for the benefit of his employees,
- (b) that he has not transferred the Fund or relevant portion thereof,
- (c) that he transfers the Fund or relevant portion.

The use of the perfect tense in the definition of condition (b) and of the present tense in the definition of condition (c) shows that these conditions cannot be satisfied by any employer who, having already transferred the Fund or relevant portion before the Provident Funds Relief Act came into force, was not when the Act came into force in the position of not having transferred it, and was therefore not in a position to transfer it.

It must not be overlooked that while an employer who has effected a transfer before the coming into force of the Provident Funds Relief Act will not suffer the loss resulting from the operation of sub-section (1) of section 58-K, he will as a corollary not enjoy the benefit resulting from the operation of sub-section (2) of that section.

Employers' subscriptions to an unrecognised provident fund may be treated as business expenses if the conditions laid down in paragraph 64

are satisfied. Lump transfers of accumulated subscriptions, with or without interest thereon, made after the Provident Funds Relief Act, 1929, came into force, are governed by section 58-K which is specifically made applicable to unrecognised as well as to recognised funds.¹

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

Provisions relating to rules.

(2) In addition to any power conferred by this Chapter, the Governor General in Council 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

¹ I. T. Manual, para 31.

over the recognition of provident funds and the administration of recognised provident funds as he may deem requisite.

CENTRAL BOARD OF REVENUE

Notification No. 12, dated the 15th March, 1930.

In exercise of the powers conferred by Chapter IX-A and by section 59 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue is pleased to make the following rules, the same having been previously published as required by sub-section (1) of section 58-L read with sub-section (4) of section 59 of the said Act:—

1. These rules may be called the Indian Income-tax (Provident Funds Relief) (Central Board of Revenue) Rules.

2. In these rules "section" means a section of the Indian Income-tax Act, 1922 (XI of 1922).

3. An order according recognition to a provident fund shall take effect—

(a) in cases where the application for recognition has been received by the Commissioner of Income-tax before the 31st May, 1930—on 31st March, 1930;

(b) in other cases—on the last day of the month in which the order is made, or at the request of the employer, on the last day of any later month in the same financial year.

4. An appeal under sub-section (5) of section 58-B shall be in the following form and shall be verified in the manner indicated therein :—

Form of appeal against non-recognition of a Provident Fund by a Commissioner of Income-tax.

To

The Central Board of Revenue.

The petition of _____ employer (s)
carrying on business, profession or _____ at _____

Your petitioner(s) applied to the Commissioner of Income-tax under section 58-B of the Indian Income-tax Act, 1922, for the recognition of the provident fund maintained by them (him) for the benefit of their (his) employees. The Commissioner of Income-tax has refused recognition for the reasons stated in his order dated _____ of which a copy is attached.

For the reasons set out below your petitioner (s) submit(s) that the fund should be recognised ; and pray (s) that the Central Board of Revenue may be pleased to accord recognition.

Grounds of appeal.

We/I _____ the petitioner(s) named in the above petition do declare that what is stated therein is true to the best of our/my information and belief.

Signature.

Address of Appellant.

Date

5. The accounts of a recognised provident fund shall be prepared at intervals of not more than twelve months.

6. An account shall be maintained for each subscriber to the fund in the following form :—

Name.....

Date of joining Fund.

Account closed
 date
 Paid to employee
 Lapsed to employer or to fund.
 Recovery by employer.

Year and month. 1	Salary. 2	Contributions and interest.						Total contributions. Columns 3, 6 and 7. 9	Total interest columns 4, 6 and 8. 10	Exempt.		Not exempt.			Remarks. 16
		Contributions by employee. 3	Interest on sums in column 3. 4	Regular contributions by employer. 5	Interest on sums in column 5. 6	Employer's contribu- tions of a contingent nature. 7	Interest on sums in column 7. 8			Contributions not exceeding 1-6th of salary for the year. 11	Interest on sums in column 11 at..... per cent. p. a. 12	Contributions. Column 9 minus column 11. 13	Interest. Column 10 minus column 12. 14	Additions to total income. (5, 7 and 10). 15	
BALANCE B. F.															
April															
May															
....															
....															
March															
Adjustment on account of tem- porary withdrawals account (columns 11 and 12 only).	Total.														
Adjustment on account of non- repayable with- drawals account (columns 11, 12, 13 and 14).	Total carried over.														
		3 and 4		5 and 6		7 and 8					11 and 12				

N.B.—The totals of columns 3 and 4, 5 and 6, 7 and 8 and 11 and 12 will be carried into the next year as the opening balance of columns 3, 6, 7, and 11, respectively.

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NON-REPAYABLE WITHDRAWALS ACCOUNT

	Amount.
April	
May	
June	
July	
.....	
.....	
March	
Total	

TEMPORARY WITHDRAWALS ACCOUNT

	Advance	Repayment	Interest.
Balance brought forward—			
April			
May			
June			
July			
.....			
.....			
.....			
.....			
March			
		Balance carried over.	

7. An abstract for the financial year or other applicable accounting period of the individual account of each employee participating in a recognised provident fund shall be furnished by the trustees to the Income-tax Officer of the area in which the employer conducts his business, profession or vocations or to such other Income-tax Officer as the Commissioner may, in each case, direct, not later than the fifteenth day of June in each year. It shall be in the form prescribed in rule 6, but shall show only the totals of the various columns thereof for the financial year or other accounting period. It shall also give an account of any temporary withdrawals by the employee during the year and of the repayment thereof.

8. The account to be made under the provisions of sub-section (1) of section 58-J shall show in respect of each employee (i) the total salary paid to the employee during the period of his participation in the provident fund, (ii) the total contributions, (iii) the total interest which has accrued thereon, and (iv) so far as may be, the percentage of the employee's salary in accordance with which contributions have been made by the employer and employee. (Notification No. 2 of the Central Board of Revenue.)

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

Application of this Chapter.

XIX of 1925.

See Act XIX of 1925, as to the Provident Funds to which that Act applies.

Chapter X
MISCELLANEOUS

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

P. 133.
Power to make rules.

(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—

R. 23, 24.
P. 141.
R. 25, 32, 35.
R. 33, 35.
R. 36, 40.

(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 ;

10 & 11 Geo.
V. Ch. 18.

(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 ;

10 & 11 Geo.
V. Ch. 13.

(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 Gazette of India, and shall thereupon have effect as if enacted in this Act.

History.—Sub-clause (3) was inserted by the Income-tax Amendment Act XXVIII of 1927.

As if enacted in this Act.—These words place the rules on the same level with the Act itself. Not only have the rules the force of law, but are to be deemed to be part of the Act itself.

Rules.—Rules made under section 59 of the Act by the Central Board of Revenue are contained in Part II of the Income-tax Manual. With the exception of the rules first made under the Act, the power to make rules is, under section 59 (3), subject to the condition of “previous publication”. The meaning of the phrase “subject to the condition of previous publication” is given in section 23 of the General Clauses Act, 1897 (X of 1897), viz. :—

“Where, by any Act of the Governor General in Council or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply namely—

(1) the authority having power to make the rules or bye-laws shall before making them publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby ;

(2) the publication shall be made in such manner as that authority deems to be sufficient ;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration ;

(4) the authority having power to make the rules or bye-laws, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified ;

(5) the publication in the Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publications shall be conclusive proof that the rule or bye-law has been duly made.¹

Assessment of insurance companies.—Under section 59 (2) (ii) special rules have been made prescribing the manner in which and the procedure by which, income, profits and gains shall be arrived at in the case of insurance companies. The rules so made are rules 25 to 32 while rule 35 deals with the particular case of non-resident companies.

Under these rules the income, profits and gains of life assurance companies incorporated in British India are determined by taking the annual average of the total profits disclosed by the last actuarial valuation adding thereto any deductions made from the gross income in arriving at

¹ I. T. Manual, para 133.

the actuarial valuation which are not admissible under the Income-tax Act and adding also any Indian income-tax deducted from or paid on income derived from investments before such income is received. If the Indian income-tax deducted at the source from interest on investments exceeds the tax on profits thus calculated, a refund is permitted of the amount by which the deduction from interest on investments exceeds the tax payable on profits. The same provisions under rule 26 apply also to the determination of the income, profits and gains derived from the annuity and capital redemption business of life assurance companies, the profits of which can be ascertained from the results of an actuarial valuation.

For the purpose of refund in such cases it is the annual average of the tax deducted from the interest on the company's investments at the source that is to be taken and not, as has been sometimes claimed by insurance companies, the tax actually paid during a particular year of assessment. The reason for this is obvious. The method of assessment based on the previous valuation is itself a concession which, if the companies wish to enjoy, they must take as a whole. If there were to be a subsequent re-adjustment with reference to any of the transactions in the current actuarial period, this would have to be made after the period was closed with reference to the transactions of the company as a whole during that period, but this course would obviously not be suitable as it would mean very long deferred adjustments.

In other classes of insurance business (Fire, Marine, Motor Car, Burglary, etc.) an annual calculation of profits is practicable, and rule 29 provides in the case of those particular businesses for the method of treating sums placed by companies carrying on some or all of these branches of insurance business to reserves for unexpired risks. The reasons underlying the concession granted in this rule should be carefully noted. The profits derived, for instance, by a Fire Insurance Company from the premia which it receives cannot be finally determined until the policies issued in return for the premia have expired and the risks to the company thereunder have terminated, and as the periods during which the risks endure will not ordinarily coincide with the period on which the assessment to income-tax is based, it is necessary to frame some estimate of the expenditure which the company will be called upon to incur owing to the fact that the risks covered by its premium income in the years of assessment have not entirely ceased. With proper safeguards to prevent manipulation of the accounts, this

estimate can equitably be made by treating sums placed by insurance companies carrying on these classes of business to their reserve for unexpired risks as expenditure incurred solely for the purpose of earning the profits of the business. And where, as not infrequently occurs, the reserve is divided into two parts of which the first is intended to cover normal unexpired risks and is generally reckoned at a fixed percentage of the premiums and the second is intended to cover exceptional losses from widespread calamities, the rule allows this treatment to additions to both parts of the reserve. The safeguards against abuse which the rule imposes are as follows:—

- (1) All sums on account of unexpired risks, which a company wishes to have treated as expenditure for income-tax or super-tax purposes, must actually be credited to a Fund in the accounts of the company;
- (2) They must also be specifically appropriated to meet liabilities under existing contracts; and
- (3) The contracts must be with policy-holders.

The only other fund established by insurance companies for which special provision is made in the rules (Rule 30) is the Investment Reserve Fund. Amounts actually credited by an insurance company of any kind in the ordinary accounts of its business for the accounting period to its Investment Reserve Fund for the purpose of meeting depreciation in the value of its securities can be treated as expenditure incurred for the purpose of earning the profits of the business in determining the taxable income of the insurance company in that year. The reasons for this departure from the general rule that reserves are not allowed as a business expense are as follows:—In the first place it may be noted that these adjustments are not optional, the company is required to make them in order to ensure that its assets are not overstated in the valuation. The transfer of sums by a Life Assurance Company to Investment Reserve Fund differs, moreover, essentially from the placing of amounts to reserve by a bank or ordinary commercial company either for the purpose of extending its business, or for the provision of additional working capital; the sums thus placed to reserve are practically speaking composed of undistributed profits. There is also a substantial difference between this transaction on the part of an insurance company, and that by which a bank writes off the depreciation of the securities which it holds. A bank

meets depreciation by reducing its Reserve Fund: a Life Insurance Company meets it by reducing its Life Assurance Funds, and this reduction may be made either by writing down its assets or by leaving the assets unaltered, and setting up as a liability an Investment Reserve Fund equal to the depreciation. The latter course is usually adopted; but in both cases the depreciation is a loss, and to tax the amount of depreciation would lead to the anomalous result that the greater the loss to the company the greater would be the amount which it is required to place to its Investment Reserve Fund, and consequently the greater the tax it would have to pay.

On the other hand should the accounts show a credit for "appreciation" of assets, rule 30 provides for such appreciation being taxed. The words "as has been otherwise taken into account" in the latter portion of rule 30 mean "having been carried to the Life Assurance Fund or otherwise taken into account".

The reason for the use of the word "may" instead of "shall" in rules 27, 29 and 30 is that while the concessions conferred by these rules should be granted as a general practice the income-tax authorities retain a discretion to refuse them where the concessions have been abused.

Companies carrying on Dividing Society or Assessment business are in a different position to the insurance companies proper in that they have not to build up funds similar to the Life Assurance Fund of ordinary Life Assurance business, and their profits are not ordinarily ascertainable by actuarial valuation. It is necessary, therefore, to fix some arbitrary method of determining the taxable income of companies transacting these kinds of business, and under rule 31 this is done by taking 15 per cent. of the premium income in the "previous year."¹

See also rules 33 and 35 quoted under section 42 and rule 36 quoted under section 48.

Rule 25. In the case of Life Assurance Companies incorporated in British India whose profits are periodically ascertained by actuarial valuation, the income, profits and gains of the Life Assurance Business shall be the average annual net profits disclosed by the last preceding valuation, provided that any deductions

P. 141.

¹ I. T. Manual, para. 141.

made from the gross income in arriving at the actuarial valuation which are not admissible for the purpose of income-tax assessment, and any Indian income-tax deducted from or paid on income derived from investments before such income is received, shall be added to the net profits disclosed by the valuation.

Rule 26. Rule 25 shall apply also to the determination of the income, profits and gains derived from the annuity and capital redemption business of life assurance companies the profits of which can be ascertained from the results of an actuarial valuation.

Rule 27. If the Indian income-tax deducted from interest on the investments of a company exceeds the tax on the income, profits and gains thus calculated, a refund may be permitted of the amount by which the deduction from interest on investments exceeds the tax payable on such income, profits and gains.

Rule 28. In the case of other classes of insurance business (fire, marine, motor-car, burglary, etc.) of a company incorporated in British India, the income, profits or gains shall be determined in accordance with the provisions of the Act subject to the allowance specified in the rule next following.

Rule 29. If in the ordinary accounts of any insurance business other than Life Assurance, annuity, or Capital Redemption Business carried on by an Insurance Company any amount is actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risk in respect of policies which have been issued (including risk of exceptional losses) and is not used for any other purpose such amount may be treated as expenditure incurred solely for the purpose of earning the profits of the business.

Rule 30. Any amount either written-off in the accounts or through the Actuarial Valuation Balance Sheet to meet depreciation of, or loss on securities or other assets or which is carried to a reserve fund formed for that sole purpose and not used for any other purpose, may be treated as expenditure incurred solely for the purpose of earning the profits of the business. Any sums taken credit for in the accounts or Actuarial Valuation Balance Sheet on account of appreciation of or gains on the securities or other assets shall be deemed to be income chargeable to tax subject always to deduction of such portion thereof as has been otherwise taken into account in calculating the income, profits or gains.

Rule 31. The income, profits and gains of companies carrying on Dividing Society or Assessment business shall be taken at 15 per cent. of the premium income in previous year and, in the case of non-resident companies, at 15 per cent. of the Indian premium income in the previous year.

Rule 32. Notwithstanding anything contained in rules 25 to 31 the total income, however, of an insurance company carrying on more than one class of business shall be determined by its aggregate income from all classes of business.

60. (1) The Governor General in Council may, by notification in the Gazette of India, 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.

Power to make exemptions, etc.

P. 18, 47.

(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason

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 Governor General in Council may grant such relief as he may think fit.

Exemptions.—Incomes excluded from “total income.”—In addition to the exemptions mentioned in section 4 (3), the following further exemptions have been made by the Governor-General in Council in exercise of the powers conferred by section 60 of the Act.

“The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income or salary of an assessee for the purposes of the said Act:—

(1) The official allowance which an agent of a Prince or State in India who has been duly accredited to represent the Prince or State for political purposes in any place within the limits of British India, receives as such agent in British India from the Prince or State; and the official salaries and fees which a Consul-General, Consul, Vice-Consul or Consular Agent of a Foreign State, whether ‘de carrier’ or not, and whether a British or a foreign subject, or a representative or consular employee of a Foreign State, not being a British subject, receives in India from such Foreign State in his capacity of Consul-General, Consul, Vice-Consul or Consular Agent representative or consular employee.

(The latter portion of this exemption applies only to salaries and fees received from their Governments and not to any other income, profits, or gains, accruing or arising to them or received by them in British India.)

(2) Sums paid in pursuance of Article 3 of the agreement dated the 17th August 1825 between the British Government and the King of Oudh.

(3) Income derived from the Bua tax defined in clause (c) of section 2 of the Teri Dues Regulation, 1902.

(4) The salary and allowances paid by a State in India during the period of deputation to any person deputed by the State for training in British India.

(5) Scholarships granted to meet the cost of education.

(6) Such portion of the income of a member of His Majesty’s Naval, Military or Air Forces, British or Indian, or of the Royal Indian Marine as

is compulsorily payable by him under the orders, or with the approval of Government for payment to a mess, wine or band fund.

(7) The allowances attached to—

- The Victoria Cross.
- The Military Cross.
- The Order of British India.
- The Indian Order of Merit.
- The King's Police Medal.
- The Indian Police Medal.

(8) The interest on Government securities held by, or on behalf of, Ruling Chiefs and Princes of India as their private property.

(9) 'Jangi Inams' awarded to Indian Officers, Indian other ranks and followers in respect of services in the Great War.

(10) The yield of Post Office cash certificates.

(11) The interest on deposits in the Post Office Savings Bank.

(12) The income of a University or other educational institution existing solely for educational purposes and not for purposes of profit.

(13) The income of "Thana Funds" administered by Political Agents in Kathiawar and of the "Secunderabad Local (Abkari, etc.), Fund" administered by the Resident at Hyderabad.

" 13-A. The income of the Rewa Kantha Mewas Administrations Fund, and of the Sankheda Mewas Road Fund administered by the Political Agent, Rewa Kantha."

" 13-B. The income of—

(a) the following funds controlled by the Agent to the Governor General in the States of Western India, namely:—

The Kathiawar Consolidated Local Fund; the Rajkot Civil Station Land Improvement Fund; the Rajkot Civil Station Fund; the Kathiawar Mounted Police Fund; the Consolidated Local Fund, Banas Kantha, including the Palanpur Agency Educational, Sihori, Deodar, Varahi, Santalpur Dispensaries, and Survey Funds; and the Sadra Bazar Fund;

(b) the village Police Funds, Kankerji, Deodar, Suigam, Varchi Santalpur, controlled by the Political Agent, Sabar Kantha Agency; and

(c) the Wadhwan Civil Station Fund controlled by the Political Agent, Eastern Kathiawar Agency.

“ 13-C. The income of the Nowgong Cantonment Fund.”

“ 13-D. The income of Regimental Institutes derived from rebates payable by Institute Contractors.”

(14) The salary of His Majesty's Trade Commissioners in India.

(15) The salary of the Canadian Trade Commissioner in India at Calcutta.

(16) The salary of the Trade Commissioner in India of the United States of America, and of any members of his staff who are citizens of the U.S.A. and have been detailed for duty with the said Trade Commissioner by the Government of the said States.

(17) The salaries of the correspondent of the International Labour Office, New Delhi, and his staff.

(18) The salaries of the Organiser and Manager of the Branch Office of the League of Nations, Bombay, and his staff,

(19) The salaries of Khasadars levies and Badraggas employed in the tribal territory on the North-West Frontier and of all persons employed in the tribal levy service in Baluchistan.

(20) The allowance or salary paid in the United Kingdom to officers of Government on leave or duty in that country whether such allowance or salary is paid in sterling in the United Kingdom or by means of negotiable rupee drafts on a bank in India.

(21) The leave allowance or salary drawn from any Colonial Treasury by officers of Governments on leave or duty in the Colony.

(22) Leave salaries or leave allowances paid in the United Kingdom or in a Colony, to officers of local authorities, or to the employees of Companies, or of private employers on leave in the United Kingdom or in such Colony.

(23) Vacation salaries paid in the United Kingdom or in a Colony to Judges of High Courts or of Chief Courts, to Judicial Commissioners, or to other officers of Government, when on vacation therein.

(24) The pensions of officers of Government residing out of India drawn from any Colonial Treasury or paid in the United Kingdom whether such pensions are paid in sterling or by means of negotiable rupee drafts on a Bank in India.

(25) The salaries of the light-house keepers of light-houses in the Red Sea.

(26) The pensions paid in the United Kingdom or in a Colony to officers of local authorities or employees of companies or of private employers, such officers or employees being resident out of India.

(27) The interest on Mysore Durbar's Securities.

(28) Pensions granted to officers of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine or to members of the Indian Police Forces, or to civil officers serving in a civil capacity with a Military Force in respect of wounds or injuries received in action or in the performance of their duties as members of such forces otherwise than in action.

(29) Pensions granted to members of His Majesty's Naval, Military or Air Forces, British or Indian, or of the Auxiliary Force, India, or of the Indian Territorial Force, or of the Royal Indian Marine, or to Civil Officers serving in a civil capacity with a Military Force, who have been invalided from service with such forces on account of bodily disability attributable to, or aggravated by, such service.

(30) Value of rations issued in kind or money allowances paid in lieu thereof, to any officer or other rank in His Majesty's Naval, Military or Air Forces, British or Indian or in the Auxiliary Force, India, or in the Indian Territorial Force, or in the Royal Indian Marine.

(31) Value of rent-free quarters occupied by, or money allowance paid in lieu thereof to, Indian Officers, British Warrant and non-commissioned officers and men of His Majesty's Military or Air Forces, and British and Indian Warrant officers of His Majesty's Naval and Marine Forces; in all cases irrespective of whether the individual concerned is married or single.

(32) Conservancy allowance granted in lieu of free conservancy to non-departmental Warrant and non-commissioned officers of the Indian Unattached List, departmental non-commissioned officers of the Indian Unattached List, not in receipt of consolidated rates of pay and Warrant and non-commissioned officers of the permanent staff of the Auxiliary and Territorial Forces.

(33) The value of free education provided for the children of British Warrant and non-commissioned officers and any grants-in-aid

made to British Warrant and non-commissioned officers in lieu of the provision of free education for their children.

(34) The income of persons, other than persons in the service of the Government, residing in the district of Angul.

(35) Deferred pay within the meaning of paragraph 254, Pay and Allowance Regulations for the Army in India, Part II, paid to soldiers or non-commissioned officers of the Indian Army.

"(35-A) Shore allowance granted to Warrant Officers of the Royal Indian Navy when employed on Marine Survey duties under paragraph 89 (c) of the Regulations for the Royal Indian Navy, Volume 1."

(36) The income of indogenous hillmen, other than persons in the service of Government residing in the following areas of Assam :—

The Naga Hills District.

The Lushai Hills District.

The Sadiya Frontier Tract.

The Balipara Frontier Tract.

The Lakhimpore Frontier Tract.

The Garo Hills.

The Jowai sub-division of the Khasi and Jaintia Hills District and

The North Cachar Hills in the district of Cachar.

(37) The perquisite represented by the right of any of the officers specified in the annexed list to occupy free of rent as a place of residence any premises provided by Government.

List of officers.

The Governor General.

The Commander-in-Chief.

The Governor of a Governor's Province.

The Chief Commissioner of any of the following Provinces namely :—

British Baluchistan,

Delhi,

Ajmer-Merwara

Coorg,

The Andaman and Nicobar Islands,

Aden and

any first class Resident in the Political Department.

(38) Such part of income in respect of which the said tax is payable under the head "property" as is equal to the amount of rent payable for a year but not paid by a tenant of the assessee and so proved to be lost and irrecoverable, where—

- (a) the tenancy is bona fide ;
- (b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property ;
- (c) the defaulting tenant is not in occupation of any other property of the assessee ;
- (d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfied the Income-tax Officer that legal proceedings would be useless ; and
- (e) the annual value of the property to which the unpaid rent relates has been included in the assessed income of the year during which that rent was due and income-tax has been only duly paid on such assessed income.

(39) The lump grants made by Government to the Indian church—

- (1) for the provision of episcopal supervision and ministrations ;
- (2) for the payment of allowance to clergymen entertained in lieu of Chaplaincies reduced ; and
- (3) in lieu of the grants-in-aid at present given for the entertainment of clergymen of the Additional Clergy Society under Articles 602 and 603 of the Civil Service Regulations.

(40) When in any year an employee participating in a recognised provident fund has ceased to be an employee of the employer maintaining the fund and has been declared by such employer not to be eligible to receive the whole of the accumulated balance due to him, so much of his income as is assessable for that year shall be exempted from income-tax and shall be excluded from the computation of his total income for the purposes of the said Act as is equivalent to so much of the accumulated balance due to him as has not been paid or is not payable to him, and if such amount exceeds the amount of his income in that year, so much of his income in the following year or years as is equal to the amount of such excess shall be so exempted and excluded in such year or years.

(41) Income of a Service Fund derived from interest on Government securities or interest on funds deposited with Government.

For the purposes of this exemptions, a Service Fund means a fund established under the authority of, or with the permission of, Government for the purpose of securing deferred annuities to the subscribers or payments to them in the event of their resignation or dismissal from the service in which they are employed, or provision for their wives or children after their death, or payments to their estate or their nominees upon their death, to which servants of Government are alone admissible as subscribers or members and the funds of which are either deposited with Government or invested in Government Securities.¹

Exemptions—Incomes included in "total income."—The following classes of income shall be exempt from the tax payable under the said Act, but shall be taken into account in determining the total income of an assessee for the purposes of the said Act :—

(1) The interest on Government securities purchased through the Post Office, and held in the custody of the Accountant-General, Posts and Telegraphs, provided that the face value of the securities so held on account of any one assessee does not exceed Rs. 22,500,

(2) Sums received by an assessee on account of salary, bonus, commission, or other remuneration for services rendered, or in lieu of interest on money advanced, to a person for the purposes of his business,

where such sums have been paid out of, or determined with reference to, the profits of such business,

and, by reason of such mode of payment or determination, have not been allowed as a deduction but have been included in the profits of the business on which income tax has been assessed and charged under the head "business."

Provided that such sums shall not be exempt from the payment of super-tax unless they are paid to the assessee by a person other than a company and have already been assessed to super-tax.

(3) The profits of any Co-operative Society other than the Sanikatta Salt-owners' Society in the Bombay Presidency

¹ I. T. Manual, para 17.

for the time being registered under the Co-operative Societies Act, 1912 (II of 1912), the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925), or the Burma Co-operative Societies Act, 1927 (Burma Act VI of 1927), or the dividends or other payments received by the members of any such Society on account of profits.

Explanation.—For this purpose the profits of a Co-operative Society shall not be deemed to include any income, profits or gains from—

- (1) investments in (a) securities of the nature referred to in section 8 of the Indian Income-tax Act, or (b) property of the nature referred to in section 9 of that Act;
- (2) dividends, or
- (3) the 'other sources' referred to in section 12 of the Indian Income-tax Act."

The exemption which extends both to income-tax and super-tax applies only to "profits" in the strict sense of the word as used in the Act and does not include "income" derived by Co-operative Societies from interest on securities or dividends. The Societies whose income liable to income-tax is not taxable at the maximum rate or who have no income liable to tax should apply to the Income-tax Officer concerned for the issue of exemption certificates authorising persons paying interest on securities not to deduct any tax at source or to deduct tax at a lower rate than the maximum, as the case may be.

Where a Co-operative Society incurs a loss under any head of income that has been exempted from tax by notification under section 60 (1) of the Act, such loss may be set off under section 24 against any income that is not so exempted.

- (4) Such part of the profits or gains of a firm which has discontinued its business, profession or vocation as is proportionate to the share of an assessee in the firm at the time of such discontinuance, if income-tax has at any time been charged on such business, profession or vocation under the Indian Income-tax Act, 1918 (VII of 1918), or if an assessment has been made on the firm in respect of such profits or gains under sub-section (1) of section 45 of the Indian Income-tax Act, 1922 (XI of 1922).

The above exemption applies only to income-tax and not to super-tax.

Apart from the particular cases mentioned in this paragraph, the incomes or portions of incomes exempted under section 4 of the Act and under the orders of the Governor General in Council under section 60 of the Act referred to in paragraph 17 are not only not subject to income-tax or super-tax, but they are also not to be taken into account in determining the rate of tax on other income; they are excluded from consideration altogether.

- (5) So much of the income of any Investment Trust Company as is derived from dividends paid by any other Company which has paid or will pay super-tax in respect of the profits out of which such dividends are paid.

Explanation.—For this purpose an investment trust company means a company in respect of which the Governor General in Council is satisfied that :—

- (i) it is a company having for its principal business the acquisition and holding of investments in the stocks, shares, bonds, debentures or debenture-stocks of other companies or in securities issued by public authorities ;
- (ii) it is not a company formed for the purpose of, or engaged in, acquiring or exercising control over any other company or group of companies or enabling any other persons to acquire or exercise such control ;
- (iii) it is a company deemed under clause (b) of the Explanation to sub-section (2) of section 23-A, of the said Act, to be a company in which the public are substantially interested.

The above exemption applies only to super-tax and not to income-tax.¹

Relief under section 60 (2).—In calculating relief to be granted to an assessee in respect of any year under section 60 (2), any advantage gained by him in a previous year in which part of his salary was short-paid will be taken into account. This sub-section applies to all cases irrespective of the consideration that the payment of salary in advance or in arrears was

¹ I. T. Manual, para 18.

in accordance with the rules governing the payment. 'Salary' in this subsection has the same meaning as "salary" in section 7.¹

Composition not permissible.—The provision in previous Acts that allowed a system of composition of assessment and enabled the Income-tax Officer under specified conditions to enter into composition with assesseees has been omitted from the present Act. No composition of assessment can, therefore, now be made although any composition entered into before the present Act came into force must be given effect to for the period for which the agreement was made.²

Assessment of income-tax on married women.—Although there is no specific provision to this effect in the Act, a married woman is chargeable as if unmarried and has to be separately assessed in respect of her separate income.

Pension received from funds such as the Indian Military Service Family Pension Fund by a widow on account of her children, and on account of herself are distinct and separate from one another. The pension of a minor orphan paid to his or her mother or a duly appointed or recognised guardian should not be included in the taxable income of the mother or guardian for the purposes of income-tax assessment.³

Burden of Proof.—When an assessee claims exemption from income-tax in respect of income that is prima facie chargeable to income-tax, the onus lies on him to show that the income is so exempted.⁴

Profit.—The term "profits" in the Government of India Notification dated 25th August, 1925, is used in the sense that "profits" are "the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts." Prima facie, therefore, neither interest from securities nor income derived

¹ I. T. Manual, para. 134.

² I. T. Manual, para. 135.

³ I. T. Manual, para. 136.

⁴ Commissioner of Income-tax, Burma v. Bengalee Urban Co-operative Society Ltd., 1934 I. T. L. J. 22 ; 7 I. T. C. page 61.

from property are profits within the meaning of that term as used in the Notification. Whether such investments are profits of a business carried by an assessee is a question that depends upon the circumstances of each case.¹

Government can issue Notification exempting Income-tax or Super-tax.—Under Section 60 the Government of India can, by notification, deal with income-tax and super-tax but it does not necessarily follow that the Government of India cannot exempt, reduce in rate or otherwise modify income-tax alone. The Government of India Notification, Finance Department (Central Revenues) No. 21, dated 12th October, 1929, extends to income-tax alone. It does not exempt an assessee from liability to pay super-tax.²

Co-operative Societies.—The object of notification of Government of India dated 12-8-1925 was to exempt profits accruing to co-operative societies from carrying on the business of mutual cooperative concern and thus foster the growth of cooperative movement. But unless the investment of capital in property securities is part of the business of the society, the interest from securities will not fall within the description of “profits” within the meaning of that expression.³ Thus where a registered cooperative society made an investment of their liquid assets in the Government securities, it was held that the interest on such investment is income liable to income-tax.⁴ But in another case, it was held that a mutual co-operative society and was not liable to tax.

¹ Commissioner of I. T. Burma v. Bengalee Urban C.C. Society Ltd., 1934 I. T. L. J. page 22.

² A. C. T. Nechiappa Chettiar v. Commissioner of Income-tax, Madras, 7 I. T. L. J. page 262; 56 I. L. R. Madras 679; A. I. R. 1933 Madras 701.

³ A. I. R. 1934 Rang. 27 S. B.

⁴ *In re* Madras Central Urban Bank Ltd., A. I. R. 1929 Madras 387.

The assessee Society, a Mutual Co-operative Society, was incorporated in England in 1923 under the Industrial and Provident Societies Act of 1893 and the shares were owned exclusively by two other Co-operative Societies, the Co-operative Wholesale Society of England and the Scottish Co-operative Wholesale Society of Scotland. The Society derived its profits mostly from a mutual fund, returning to its members merely the difference between the amount notionally debited to them and the saving that the Society has been able to effect by its operations and that difference was distributed by way of bonus to its members. The profits of the Society were utilized also in paying interest on share capital. The object of the society was simply to run tea estates, grow the produce required and ship it to the two constituent societies. The Society also paid dividends to the members rateably in proportion to the amount of purchases made by them. The Society was never registered in India and it was admitted by the Commissioner that had it been registered in India, it would undoubtedly be exempt from tax under the Notification of the Government of India dated 25-8-1925 made under section 60 of the Act. On being assessed to tax, it was held, that the Society was a purely Mutual Co-operative Society making no profits and, therefore, not liable to income-tax in this country.¹

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

Appearance by
authorised representative.

P. 99.

¹ English and Scottish Joint Cooperative Wholesale Society Ltd. v. Commissioner of Income-tax, Madras, 3 I. T. C. 385.

See also notes under section 23 supra.

Scope.—Section 61 authorises an assessee either to appear in person in any proceeding under the Income-tax Act, or authorise any person in writing to appear on his behalf. The assessee is enabled by this section not to appear at all at any stage of any proceedings under this Act. Again, no restriction is placed as to the person whom the assessee may choose to appear for him. He may appoint an advocate or a pleader to represent him. In such a case the advocate or a vakil can appear under a duly executed Vakalatnama, or memorandum of appearance, if he is required only to plead and not to act. The advocate or vakil concerned will be governed as to his appearance by the rights conferred on him by the Bar Councils Act or the Legal Practitioners Act.

It seems that mere laymen should not be allowed to regularly appear for assesseees before Income-tax Officers. It has even been held that solicitors, who in Presidency Towns are by virtue of their certificates, entitled to do certain things in connection with cases before courts, are not entitled to be heard by a court, and a vakil, or advocate alone should be allowed to do so.¹

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

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.
Service of notices.
P. 137. V of 1908.

¹ *In re Birendra Kishore Manikya*, 48 Cal. 766 F. B.

(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 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.

Method of serving notices or requisitions.—Under section 63 of the Act a notice or requisition may be served either by post or in any manner provided for the service of summons under the Code of Civil Procedure. The words "by post" under section 27 of the General Clauses Act, 1897 (X of 1897), mean "by registered post."

Section 63 (2) specially provides that in the case of firms or Hindu undivided families a notice or requisition may be addressed to any member of the firm or to the manager or any other male member of the family.¹

History.—The words "and in the case..... thereof" at the end of sub-section (2) were added by the Income-tax Amendment Act XI of 1924.

By Post.—The rule about the service by post is subject to the provisions of section 27 of General Clauses Act.² Under section 27 "By Post" means "by registered post." The section runs as follows :—

Section 27 of General Clauses Act.

"When any Act of the Governor General in Council or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expression is used, there, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved to have been effected

¹ I. T. Manual, para 137.

² A. I. R. 1932 All. 901; 5 All. 354; 5 I. T. C. 134.

at the time at which the letter would be delivered in the ordinary course of post."

Service of Summons under the Code of Civil Procedure.—Section 63 (1) makes only the method of service of summons under the C. P. C. to be applicable to notices and requisitions issued under the Income-tax Act. Other provisions of C. P. C. relating to summons have not been made applicable.

The following provisions of C. P. C. seem to be relevant for the purpose of service under the Income-tax Act.

ORDER V OF C. P. C.

9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

Delivery or transmission for service.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Mode of service.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service to be on defendant in person when practicable or on his agent.

13. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits shall be deemed good service.

Service on agent by whom defendant carries on business.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

15. Where in any suit the defendant cannot be found (In Allahabad for the preceding sentence read 'When the defendant is absent or cannot be personally served') and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation—A servant is not a member of the family within the meaning of this rule.

(In Oudh for the words 'Wherein found,' substitute 'Where a summons has been issued to a defendant on the institution of a suit and he is absent from the address stated in the summons'.)

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in

which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Effect of substituted service.

(3) Where service is substituted by order of the Court, the court shall fix such time for the appearance of the defendant as the case may require.

Where service substituted, time for appearance to be fixed.

21. A summons may be sent by the Court by which it is issued, whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

Service of summons where defendant resides within jurisdiction of another Court.

22. Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

Service within Presidency towns and Rangoon, of summons issued by Courts outside.

23. The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of the issue, together with record (if any) of its proceedings with regard thereto.

Duty of Court to which summons is sent. shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of the issue, together with record (if any) of its proceedings with regard thereto.

24. Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

Service on defendant in prison. shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

25. Where the defendant resides out of British India and has no agent in British India empowered to accept service, the summons shall (In Allahabad and Oudh read 'may' for 'shall') be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service where defendant resides out of British India and has no agent. shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

25A. When the defendant resides in British India but outside the limits of the United Provinces of Agra and Oudh, Allahabad, the Court may, in addition to or in substitution for any other mode of service, send the summons by post to the defendant at the place where he is residing or carrying on business. An acknowledgment purporting to be signed by the defendant, or an endorsement by a postal servant that the defendant refused service, may be deemed by the Court issuing the summons to be prima facie proof of service. (Added by Allahabad High Court.)

26. Where—

(a) in the exercise of any foreign jurisdiction vested in His Majesty or in the Governor-General in Council, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(b) the Governor-General in Council has, by notification in the Gazette of India, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court

under this Code shall be deemed to be valid service, the summons may (In Allahabad and Oudh after 'may' add 'in addition to, or in substitution for, the method permitted by rule 25') be sent to such Political Agent or Court by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

As to service on any agent, it has been held that a notice under section 22 (3) may be served on any recognized agent of the assessee.¹

But the Income-tax Officers in doing the very important work of assessing income-tax must take the elementary precaution of seeing that the person with whom they are dealing is in fact authorised to represent the assessee and they are not entitled to assume this merely because such person has on occasions signed a notice or produced account books for inspection. An accountant of a joint family business who is not appointed an agent to accept service by an instrument in writing is not entitled to receive notice on behalf of the joint family. Service of notice on him is not valid service on the assessee.²

Notice addressed to the assessee, acknowledgment by his son, if sufficient.—Where a notice under section 22 (2) is issued by registered post, acknowledgment due, and is taken delivery by the assessee's son without stating the name of the addressee for whom he purports to sign the acknowledgment, and the son, though a minor, is possessed

¹ A. I. R. 1931 Pat. 282.

² Commissioner of Income-tax v. Baniram Rodmal, A. I. R. 1934 Nag. 175; 1934 I. F. L. J. 118; 7 I. T. C. 254.

of ordinary intelligence and is living with his father and had on previous occasions received such notices on behalf of the assessee, the service of the notice on the assessee is good. It was held that as, having regard to the Rules made under the Post Office Act in the Postal Guide and the provisions of Section 184 of the Indian Contract Act (1872), a minor son may become an agent of his father, the delivery of the notice was good delivery and that service was sufficient.¹

But where a notice under the Income-Tax Act is delivered otherwise than by post to any clerk or servant on the premises where the assessee carries on business and according to the practice obtaining in the business the employee is expected to hand over any communication which he has received to the manager, that is not evidence upon which the income-tax authorities can find as a fact that the manager was served with the summons.²

Adjournment.—A letter granting an adjournment is neither a notice under section 23 (2) nor a requisition under section 65 and as such the provisions regarding the service of summons do not apply to it. It is for the assessee to find out the adjourned date.³ But where the Income-tax Officer tells the assessee that a date would be fixed which will be communicated to him by post, the assessee is not bound to find out the date, and is entitled to await the notice of the adjourned date, which should be served on him in either of the methods provided by section 63.⁴

¹ L. C. De Souza v. Commissioner of Income-tax, U. P., 7 I.T.L.J., page 72; 6 I. T. C. 130; A. I. R. 1932 All. 374.

² Dey Brothers v. Commissioner of I. T. Burma, 1935 I. T. L. J., page 209.

³ A. I. R. 1930 Mad. 113.

⁴ Commissioner of Income-tax v. Baniram Rodmal, A. I. R. 1934 Nag. 175.

Unregistered firm.—In the case of an unregistered firm, a notice under section 23 (2) of the Act need not be served only on the member of the firm who made the return but it can be served on any member of the firm and such service would be good under section 63 (2).¹

Service on adult son.—When the assessee is absent from his house, service on his adult son is sufficient service.²

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.

P. 138.

Place of assessment.

(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.

¹ The Commissioner of Income-tax, Madras v. Thillai Chidamiliaram Nadar, 2 I. T. C. 27; A. I. R. 1925 Mad. 1048.

² Mohanlal v. Commissioner of Income-tax, U.P., 7 I.T.L.J. page 65; 6 I. T. C. 101.

(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.

P. 35, 83.

The determination of the Income-tax Officer by whom an assessment is to be made.—While for the reasons given in paragraph 35 every Income-tax Officer is, under section 64 (4), vested with all the powers conferred by or under the 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, the question of the Income-tax Officer by whom a particular assessee is to be assessed has to be determined in accordance with the provisions of sub-sections (1) to (2) of section 64. Under those provisions, if an assessee carries on business, he has to be assessed by the Income-tax Officer of the area in which his principal place of business is situate; in all other cases an assessee has to be assessed by the Income-tax Officer of the area in which he resides. Where there is any doubt or dispute on any such question, the question is to be finally determined by the Commissioner of the province in which the areas are situate. Where the areas are situate in more than one province, the question is to be determined by the Commissioners of the provinces concerned in consultation, and, where two Commissioners are not in agreement, the question will be determined by the Central Board of Revenue. In all cases of dispute, however, before any such question is determined, the assessee must be given an opportunity of representing his views.

If an assessee whom an Income-tax Officer is seeking to assess challenges his jurisdiction on the ground that the assessee's principal place of business or residence is in a different income-tax circle, the Income tax Officer should at once report the case to the Commissioner for orders. Even if the Income-tax Officers of the various circles concerned are in agreement as to the proper place of assessment, they are not competent to decide finally where the assessment should be made unless the assessee acquiesces in their decision. If he disputes it and the alternative places of assessment are all in the same Province, the Commissioner of Income-tax of that Province can finally determine the place of assessment. If alternative places of assessment are not situated in the same Province,

it is not necessary for the Commissioners to refer the case to the Central Board of Revenue, unless they hold different views.

It is not necessary for an assessee who disputes the jurisdiction of the Income-tax Officer either to move the Commissioner himself or to ask the Income-tax Officer to do so. Whatever the assessee does or proposes to do, therefore, the Income-tax Officer should take the Commissioner's orders at once whenever his jurisdiction is challenged.

As the question of jurisdiction must be decided before any assessment can be made, the Income-tax Officers and Commissioners should deal with all questions arising under section 64 as expeditiously as possible.¹

History.—This section is analogous to section 20 of the Code of Civil Procedure, which provides for the place where a suit may be filed. The section deals with the territorial jurisdiction of Income-tax Officers. This section corresponds to section 47 of the Act of 1886 and section 47 of the Act of 1918. The present section determines the place of assessment of all classes of assesseees and is an advance on the previous sections in as much as the latter only provided the declaration of the principal place of business where the business was carried on in several places.

Principal place of business.—Ordinarily the principal place of business would be the controlling centre of the business concerned, where the central management and control actually abides.² No definition of the term is given, and it is primarily a question of fact. But it is a mixed question of law and fact. The concept of the principal connotes "control", but the control may be of varying degrees. In every case, various considerations have to be weighed before deciding as to which of the several places where a particular business has its branches, has that authority and control which should entitle

¹ I. T. Manual, para 138.

² De Beers Consolidated Mines Ltd. v. Howe, 1900 A. C. 455; 5 T. C. 198.

it to be regarded the principal place of business. It is a question of degree and therefore of fact, to be determined by the Income-tax authorities. Where the Income-tax Officer decides the question without evidence a question of law arises and the High Court can interfere. Where the business is carried on in many places, it may be that none of them is the place of business. Relevant considerations would be where the partners reside and which among them have the real control of the business, as a whole; which is the parent business out of which the business has grown; where, in the case of a company, the registered office is located; whether the business at any place is conducted with partners, at another place without partners; where the finance is arranged, and contracts entered into; where the goods are actually manufactured and sold; and so forth; and most of these considerations are relevant only in ascertaining where the effective control is exercised. The relative volume of business and profits is not by itself enough to make a place the principal place of business.¹

Reside — For the meaning of the word see notes under section 4. A person may be resident at a place which may not be one of his business places or his principal place of business. Government servants are assessed to income-tax by the Income-tax Officer in charge of central salary circle, by virtue of jurisdiction vested in such Income-tax Officers, over that class of persons.

It appears that the Income-tax Officer of any place where the assessee resides, where he has more than one place of residence, can assess him.

Partners of firms.—In cases a partner of several firms carrying on business in several places, but having no separate

¹ *In re Dinonath Hansraj*, 49 All. 616; 2 I. T. C. 304.

business of his own, apart from such partnership business, it seems that one of the places of the business of the various firms, will have to be treated as his principal place of business for the purpose of assessment under section 64 (1).

Conflict of jurisdiction.—The Income-tax Officer of the area in which the principal place of a business is situate has under section 64(1) jurisdiction to tax the total profits or gains of the branch business.¹ He has jurisdiction to call for a return of income of all branches of the principal business.² Section 64 (1) does not, however, oust the jurisdiction of the Income-tax Officer in whose territorial jurisdiction any branch business of an assessee is situated. It only gives him concurrent jurisdiction with the Income-tax Officer in whose jurisdiction the principal place of the business is situated.³ The Income-tax Officer of the place where a branch business is situated, issues a notice under section 22 (4) and after going through the accounts of branch business, sends a report to the Income-tax Officer of the place of principal business, who makes the assessment on the total income.⁴ An interesting question of law can arise, if the Income-tax Officer of the place where a branch business is situated makes an assessment under section 23 (4) for some default of the assessee for failure to file a return. Would the Income-tax Officer of the area where the principal place of business is situated be entitled to go through the accounts not produced before the Income-tax Officer of branch business, or assess the income

¹ *In re* Lachaman Prasad Babu Ram, A. I. R. 1925 All. 385; 23 A. L. J. 379.

² *Abhey Ram Chunni Lal v. Commissioner of Income-tax*, U. P., 7 I. T. L. J. page 112; A. I. R. 1933 All. 197; 6 I. T. C. 343.

³ *Lachman Das Baburam v. Commissioner of Income-tax*, 2 I.T.C. 35.

⁴ *Ramkhevan Uganlal v. Commissioner of Income-tax*, 114 I. C. 211.

of such branch. The point is not covered by authority, but it seems that the Income-tax Officer of the area where the principal place of business is situated should make the assessment of total income. The Income-tax Officer of the principal place is not bound to accept the report of the branch business, nor is he bound to refer the matter back to the latter, but is competent to decide it himself.¹

Business closed down.—The income of a business which has closed down is all the same liable to assessment and is to be taken into account in computing total income of the assessee.²

Income-tax Officer acting without reference to the Commissioner or pending orders of the Commissioner.—As soon as a question arises as to the place of assessment the Income-tax Officer is not competent to decide it either himself, or in consultation with the Income-tax Officers of the places where the business is carried on. He must refer the question to the Commissioner. No written application by the assessee to refer the matter to the Commissioner is necessary. The Income-tax Officer should himself refer the matter to the Commissioner, and must abide by the decision of the Commissioner. An assessment made pending the decision of the Commissioner is illegal and unwarranted.³

Opportunity of being heard to the assessee.—No procedure is prescribed for action under this section.

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is
Indemnity.

¹ *In re* Lachman Prasad, A. I. R. 1930 All. 49.

² A. I. R. 1927 All. 99.

³ Dinanath Hemraj v. Commissioner of Income-tax, Allahabad, A. I. R. 1927 All. 299 ; 2 I. T. C. 304.

hereby indemnified for the deduction, retention or payment thereof.

Scope.—An indemnity section is necessary in an Act which provides for deduction of tax at source.

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.

Statement of case by Commissioner to 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 33-A, 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 apply within six months from the date on which he is served with notice of the refusal 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.

(3 A) 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
P. 116. 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,
IX of 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.

History.—Section 66 corresponds with section 51 of the Act of 1918. Under that Act it was the duty of the Chief Revenue authority to refer a question of law to the High Court, which arose in course of an assessment. The assessee had no right to require the Revenue Authorities to make a reference. It was held that the High Court has power under section 45 of the Specific Relief Act to make an order requiring the Chief Revenue Authority to perform that duty, the power not being "the exercise of original jurisdiction in any manner concerning the revenue" so as to be excluded by the Government of India Act 1915.¹

The words "within 60 days.....him" and the words "sixty days" in section 66 (2) were substituted by the Income-tax Amendment Act XXII of 1930. The words "or of a decision.....section 33-A" and the words "or decision" were inserted by the Income-tax Amendment Act XXI of 1930, in section 66 (2). The proviso to section 60 (2) was inserted by the Indian Income-tax (Second) Amendment Act XVIII of 1933. The second proviso was amended by the

¹ Hilcock, Ashdown & Co. Ltd. v. Chief Revenue Authority, Bombay, 11, T. C. 221 P. C.

Indian Income-tax Amendment Act III of 1928. The words "within thirty days.....Commissioner" in the said proviso were inserted by the Income-tax Amendment Act XVIII of 1933. Sub-section (3) was amended by Act XI of 1924 and para (3A) was added by the Income-tax Amendment Act XVIII of 1933. Sub-section (7A) was inserted by the Income-tax Act XVIII of 1933 and sub-section (8) by Act XXIV of 1926. The assessee had no right of reference to High Court under the Act of 1886. Under the Act of 1918, the assessee could request the Commissioner to refer a question of law to the High Court, but had no right to apply to the High Court. The Commissioner could refuse the assessee's request for reference, if he held that no reference was necessary.

Scope.—Section 66 (1) authorizes the Commissioner to make a reference to the High Court on his own motion or on a reference by any income-tax authority subordinate to him. It does not entitle the assessee to require the Commissioner to make a reference. This sub-section is only meant for the benefit of the Commissioner, who can, if he chooses, get the benefit of the advice of the High Court, if he chooses to obtain it.¹ The language of sub-section (1) is only permissive, and there is no express obligation on the Commissioner to state a case on an order arising under section 33, consequently, there is no power in the High Court to order the Commissioner under section 45 of the Specific Relief Act to state a case.²

¹ *In re* Subbijah Ayar, A. I. R. 1930 Mad. 499; A. I. R. 1929 Nag. 266.

² *Tata Hydro Electric Agency Ltd. v. Commissioner of Income-tax, Bombay*, 1930 I. T. L. J. page 13; A. I. R. 1934 Bom. 62.

The Commissioner can make a reference under sub-section (1) at any stage of the proceedings and it is not incompetent for a Commissioner to make a reference under section 66 (1) during the pendency of an appeal before the Assistant Commissioner. It is, however, better to defer the making of a reference until all relevant facts have been finally determined, except in cases where the answer to the reference would dispose of the case finally.¹

In the case of a reference made by the Commissioner under section 66 (1), the counsel representing the Commissioner has a right to begin.²

The power of the Commissioner to make a reference under section 66 (1) is limited to proceedings other than proceedings falling under Chapter VIII. No reference can be made to the High Court in any question arising out of an order under section 52, whether the order is contained in the order passed by an appeal, or is passed in a separate proceeding.³

An assessee can require the Commissioner to state a case for the opinion of the High Court only in cases of proceedings under the sections mentioned in section 66 (2). The assessee cannot compel reference to the High Court in cases of orders with reference to other matters, e.g., orders relating to refunds under section 48 or 49.

¹ *In re Trustees of the Estate of Sir David Yule*, 1934 I.T.L.J. page 160; 7 I. T. C. 221 F. B.

² *Darabsha Nasarwanji Mehta v. Commissioner of Income-tax, Bombay*, 1935, 7 I. T. L. J. page 62.

³ *In re Narsingh Das Mohan (a)*, A.I.R. 1930 All. 231; *In re Shyam Behari Lal*, 7 I. T. C. 293.

The assessee is required to state specific points of law for reference to High Court.¹ The assessee can be allowed to raise only such points of law as were raised before the Income-tax Officer and also before the appellate authority. The expression "any question of law" has been held to mean questions of law previously raised.²

Under section 66 (2) it is only the question of law that has been referred, that can be argued before the High Court.³

Where the Income-tax Commissioner was asked by the assessee to refer three questions to the High Court, but he referred only two and after the reference had been in the paper for hearing, a petition was presented to the High Court under section 66 (3) asking for a rule upon the Income-tax authorities to show cause why they should not state a case upon the question which the Commissioner had refused to refer, held that the High Court was to decide only those questions which were referred and that any desire to introduce any new matters, requiring a stating of the case thereon, was to be discouraged and that accordingly the application was to be disallowed.⁴ In another case, it was

¹ *In re* Makhan Lal Ramswarup, A. I. R. 1935 All. 298.

² *In re* Thirubengada Mudaliar. A. I. R. 1928 Madras 889; *In re* Rai Bahadur Koram Chand, 131 I.C. 639.

³ P. K. N. P. R. Chettyar Firm v. The Commissioner of Income-tax, Burma, A. I. R. 1930 Rang. 78; 4 I. T. C. 340; A. K. A. T. C. Chettyar Firm v. Commissioner of Income-tax, Burma, 3 I. T. C. 213; A. I. R. 1928 Rang. 281.

⁴ Multan Chand Joburmal v. The Commissioner of Income-tax, Bengal, 5 I. T. C. 154; A. I. R. 1931 Cal. 727; Therunvengada Mudaliar v. The Commissioner of Income-tax, Madras, 2 I.T.C. 514; A.I.R. 1928 Mad. 889.

held that an assessee is entitled to move the High Court for a direction to the Commissioner to refer questions of law raised by him in his petition to the Court, even though they may not have been raised before the Commissioner in proceedings under section 66 (2) provided that they are questions of law arising out of the Commissioner's order passed on appeal.¹

Question of law.—At times it becomes difficult to define the limits between a question of law and a question of fact.² Under this section the High Court is, however, empowered to decide only questions of law.³ The High Court is not entitled to scrutinise evidence,⁴ or to examine books of account and arrive at a finding of fact different from that arrived at by the Commissioner nor to allow books of account not produced before the Income-tax authorities.⁵ The High Court can interfere only where the proper legal inference has not been drawn from proved facts.⁶ Nor can matters uncovered with a question of law raised before the High Court, be considered by it.⁷

¹ *Jai Narain Moti Ram v. Commissioner of Income-tax, Central Provinces*, A. I. R. 1929 Nag. 243 ; 3 I. T. C. 255.

² *General Medical Council v. Commissioner of Inland Revenue*, 13 T. C. 819 at 844.

³ A. I. R. 1931 Cal. 683 ; A. I. R. 1931 Rang. 98.

⁴ *In re P. L. S. K. R. Firm*, A. I. R. 1930 Mad. 104.

⁵ *In re Binraj Hukum Chand*, 35 C. W. N. 698 ; 5 I. T. C. 303.

⁶ *Commissioner of Income-tax v. Jambudas*, A. I. R. 1930 Nag. 200 ; 3 I. T. C. 459.

⁷ *The Manbhium Transport Co. Ltd. v. Commissioner of Income-tax, Behar and Orissa*, 6 I. T. C. 203 ; *Sir Hari Singh Gour v. The Commissioner of Income-tax, Central Provinces and Birar*, 6 I. T. C. 317.

Cases.—It is a question of law whether an assessee is entitled to appropriate money received by him in the absence of appropriation by the debtor, towards principal or interest at his discretion.¹

It is a question of law whether, when on a loan advanced, a suit is brought and a decree is passed for an amount smaller than that claimed under the loan, the part of the loan disallowed by the decree becomes a bad debt on the date of the decree.²

It is a question of law whether an assessee is liable to be taxed on interest added to renewed promissory notes and interest not actually realized in the accounting period.³

It has been held that the question whether a certain bad debt represents loss of capital or of income is a question of law.⁴

The question whether in the case of a printing press, type is a part of the machinery is a question of law.⁵

The question of the method of assessment of interest under the proviso of section 13 is a question of law.

It is a question of law whether there is any evidence at all on which the Income-tax Officer could come to the conclusion that the method of accounting was such that the profits or gains could not be computed except by the arbitrary

¹ A. I. R. 1934 Lahore 67 ; Bulaki Mal & Sons v. Com. I. T.

² A. I. R. Lahore 67 (2) above.

³ A. I. R. 1934 Lahore 67 (2) above.

⁴ A. I. R. 1934 Lahore 949; 39 C. W. N. 707.

⁵ A. I. R. 1934 Lahore 919.

⁶ Bulaki Mal & Sons v. Commissioner of Income-tax, Lahore, A. I. R. 1934, Lahore 43.

method contemplated by the proviso to section 13.¹ But no question of law is involved where a finding of fact is based on insufficient evidence.² But the proper legal effect of a proved fact is a question of law.³ No question of law however arises when the only question is as to the result of fact deducible from other facts.⁴

The finding that certain accounts are kept on mercantile system is a question of fact, if such finding is not based on any evidence at all, it involves a question of law.⁵

The question whether from facts proved a person can be held to be an agent under section 43 of the Income-tax Act is a question of law. Agency under that section is a matter of certain constructions to be put on proved facts.⁶

The question whether an appeal lies or not is a question of law.⁷

The propriety of an assessment on flat rate because the accounts for the year in question could not be separated from those of the other years is a question of law.⁸

Whether interest payable to a lending partner can be deducted in calculating the profits is a question of law.⁹

¹ A. I. R. 1934 Lahore 847; *E. M. Chattyar Firm v. Commissioner of Income-tax, Burma*, A. I. R. 1930 Rang. 4; 1 I. T. C. 891.

² A. I. R. 1928 Rang. 152.

³ A. I. R. 1927 Nag. 336.

⁴ 121 I. C. 648.

⁵ A. I. R. 1930 Lahore 197.

⁶ A. I. R. 1932 Nag. 152 and 247.

⁷ A. I. R. 1932 page 1 F. B. 11 P. 187.

⁸ A. I. R. 1927 Lahore 691.

⁹ A. I. R. 1929 Lahore 404.

Whether an assessee is entitled to show that the actual receipts had in fact been included in the estimate of the previous years is a question of law.¹

It has been held in a Rangoon case that the question of the sufficiency of a cause or reason involves a question of law.²

The question of the registration of an instrument of partnership is a question of law. The question whether an instrument fulfils the requirements of law is also a question of law.³

The question about the legal effect of the disruption of a joint Hindu family is a question of law, though the question whether there has been such a disruption is a question of fact.⁴

What constitutes a receipt for the purposes of income-tax is a question of law.⁵

Where an income-tax authority proceeds on a wrong construction of the Income-tax Act, a question of law arises.⁶

Whether income received by a member of a joint Hindu family as such can be taxed jointly with his separate income is a question of law.⁷

¹ A. I. R. 1929 Rang. 245.

² A. I. R. 1931 Rang. 34.

³ A. I. R. 1930 Sind 301.

⁴ A.I.R. 1926 Nag. 180; *Khusi Ram Karam Chand v. Commissioner of Income-tax, Lahore*, 288.

⁵ A. I. R. 1926 Rang. 180.

⁶ A. I. R. 1933 S. 145.

⁷ *Satchitananda Sinha*, 84 I. C. 792.

The question whether the pendency of an application under section 60 (2) is a bar to proceedings under section 33 is a question of law.¹

Whether an assessee requires as a dwelling house a building in the immediate vicinity of an agricultural land by reason of his connection with the land is a question of law.²

Correction of a mistake under section 35 without notice with assessee raises a question of law.³

Where a motor car damaged by accident is sold as scrap iron, the question whether the owner is entitled to claim allowance under section 10 (2) (vii) requires elucidation and that it is a point on which statement of the case may be ordered by the High Court.⁴

Where it was found as a fact that Karachi was the principal place of a business, with a branch at another place, and that the proprietors of the business carried on at both the places were one and the same, it was held, that joint assessment was legal in such a case and that no question of law was involved on which a reference could lie.⁵

Question of fact.—It is for the Income-tax Commissioner to state facts on which the High Court is to give a finding on a point or points of law. The High Court cannot arrive at a finding of fact itself.⁶ Nor can the High Court in a reference

¹ *In re Chetya Firm*, A. I. R. 1925 Rang. 245.

² 3 I. T. C. 158.

³ *In re Delhi Cloth Mills Ltd.*, A. I. R. 1923 Lahore 326.

⁴ *In re Ratna Singh*, A. I. R. 1924 Mad. 157; 1 I. T. C. 379.

⁵ *Husen Bhoj Mohammbhoy v. The Commissioner of Income-tax, Bombay*, 5 I. T. C. 310.

⁶ *In re Commercial Proprietors Ltd.*, A. I. R. 1928 Cal. 456; A. I. R. 1931 Cal. 729; A. I. R. 1933 P. C. 198; 1933 A. L. J. 1258 P. C.

under this section scrutinise evidence, as the Commissioner's decision upon the evidence is final.¹ Nor is it open to the High Court to arrive at a finding of fact different from the one arrived at by the Income-tax authorities.² The High Court is bound to accept the statement of facts made by the Commissioner.³

In a reference under section 66 the High Court is only allowed to and can only decide what are properly so called questions of law and it is not open to it to consider and reverse or modify the findings of the Commissioner as to what are pure questions of fact before it considers and decides questions of law.⁴

The mere fact that it is possible to draw another inference of fact from the evidence is no ground for the High Court to disturb the finding of fact arrived at by the Commissioner.⁵

But a finding of fact is binding on the High Court only where it has not been arrived at by some improper process or by failure to give effect to some rule of law.⁶ Thus it has been held in a recent case that a finding of fact based on private enquiries made behind the back of the assessee is not justified.

¹ *In re* P. L. S. K. R. Firm, A. I. R. 1930 Mad. 104.

² *In re* Banraj Hukam Chand, 35 C. W. N. 589; A. I. R. 1930 Rang. 224.

³ A. I. R. 1928 Cal. 456; A. I. R. 1933 Lahore 827.

⁴ A. R. A. R. S. M. Somasundaram Chettiar v. Commissioner of Income-tax, Burma, 2 I. T. C. 61.

⁵ Commissioner of Income-tax v. Jambudas, A. I. R. 1930 Nag. 200; 3 I. T. C. 459.

⁶ A. I. R. 1927 Pat. 133.

Enquiries made by the Income-tax Officer from the people of the district, after proceedings under section 23 (3) have started, of which no notice is given to the assessee, are illegal and not authorised by sub-section (3) and the result of such enquiries cannot be made the basis of any assessment. Similarly enquiries made by the Assistant Commissioner during the hearing of the appeal behind the back of the appellant are not justified by the provision of sub-section (3) and the result of such private enquiries cannot be made the basis of any assessment. Finding of fact under such and other similar circumstances would be bad and the High Court would be entitled to ask the Income-tax authorities to make proper findings of fact according to law and accepted canons of evidence so far as they are applicable to enquiries under the Income-tax Act.¹ In other respects the High Court has no jurisdiction to disturb a finding of fact even where the grounds on which the findings are based on unsound reasons or no grounds are given at all in the order.²

If the High Court finds that the facts found by the Income-tax authorities are not enough for deciding the question or questions of law involved in the case, the court can ask the Commissioner for additional facts.³

Cases.—The question whether there is sufficient cause for reopening of the assessment is a question of fact.⁴ The

¹ *Gopinath Naik v. Commissioner of Income-tax*, U. P., 1936 I. T. L. J. page 21.

² *In re M. Chettyar Firm*, A. I. R. 1930 Rang. 234 ; A. I. R. 1932 Rang. 66 ; *In re Hemraj*, A. I. R. 1933 Sind 146 ; A. I. R. 1930 Rang. 224.

³ A. I. R. 1934 All. 370 ; 1934 A. L. J. 61.

⁴ A. I. R. 1934 Lahore 983.

question whether or not the evidence adduced by the assessee should be regarded as rebutting the inference that might have otherwise been drawn from the facts is a question of fact.¹

The question whether a particular sum is profit or capital is a question of fact to be determined from the material before the Income-tax authorities.²

Where the assessee alleged that though they received certain sums of money as interest from third parties, and the investments stood in their names, yet the money was that of their sister and had been invested on her behalf, it was held, that the onus of proving the allegation lay upon the assessee and that it was open to the Income-tax Officer as a matter of law to hold that evidence produced by the assessee was insufficient to discharge the onus of proof which lay on them. So when it is not shown that either the Income-tax Officer or the Income-tax Commissioner acted in an illegal manner in arriving at that conclusion, the High Court cannot interfere with those findings.³

A question as to the sufficiency of reasons for failure to submit a return under section 22 (2) is a question of fact.⁴

The question of the sufficiency of evidence to justify the rejections of accounts is a question of fact.⁵

The finding that a certain partition deed was fabricated for the purpose of evading income-tax is a finding of fact.⁶

¹ A. I. R. 1933 Rang. 217.

² A. I. R. 1933 Rang. 217 above.

³ A. I. R. 1933 All. 231.

⁴ A. I. R. 1932 Pat. 160.

⁵ A. I. R. 1932 Oudh 873.

⁶ A. I. R. 1932 All. 471.

Whether the account-books of an assessee do or do not disclose the true income of the assessee is a question of fact.¹

A finding that the statement given by an assessee is fraudulent or incomplete is a finding of fact.²

Whether the expenditure in a business is current or capital is a question of fact.³

The question whether an assessee is joint or separate from his other members of the family, is a question of fact.⁴

Whether the assessee is entitled to be treated as a Hindu undivided family or a firm, however, has been held to be a question of law.

The assessee, on assessment, contended that they were members of a Hindu undivided family carrying on joint family business and claimed to be assessed as such. The contention not having been accepted by the Income-tax authorities, an application was made to Commissioner under sections 33 and 66 (2) for revision or for reference to the High Court. The Commissioner having refused to interfere or make the reference, application was made to the High Court under section 66 (3) for directing the Commissioner to state a case. The High Court held that the question was one of law and directed the Commissioner to state a case on the question whether or not the assesseees were entitled to be

¹ A. I. R. 1930 Pat. 81.

² A. I. R. 1929 Rang. 102 F. B.

³ A. I. R. 1928 Rang. 152.

⁴ 23 A. L. J. 40; A. I. R. 1925 All. 298.

treated for income-tax purposes as a Hindu undivided family. ¹

Whether there has been an advance of capital by a particular partner is a question of fact in each case. ²

The question of bona fide borrowing of money by a firm is a question of fact in each case. ³

The question whether a remittance made by the assessee's foreign business is a remittance out of "profits" or "capital" is a question of fact. ⁴

The assessee's firm carried on money lending business. For a certain year, interest on certain investments in the firm was allowed to be deducted on the ground that it was interest on Stridhana monies invested in assessee's business by certain lady relatives of theirs in Madras. Later, notices were issued under sections 34 and 22 (2) to enhance the assessment which was done and enhancement was upheld in appeal also. Assessee relied on the fact that the sum had been assessed in Madras as separate property of the ladies referred to. Claim for deduction was disallowed. It was held that no question of law arose in the case for a reference to High Court and the matter rested on a pure question of fact. ⁵

A certain sum was provisionally treated as income by the Income-tax authorities pending the decision of Civil

¹ Gangasager Ananda Mohan Saha v. Commissioner of Income-tax, Bengal, 3 I. T. C. page 1 ; A. I. R. 1928 Cal. 836.

² A. I. R. 1924 All. 137 ; 21 A. L. R. 703.

³ A. I. R. 1924 All. 137 above.

⁴ U. P. R. P. L. Family v. Commissioner of Income-tax, Burma, 7 I. T. L. J. page 348 ; A. I. R. 1933 Rang. 217.

⁵ I. R. M. S. T. Firm v. Commissioner of Income-tax, Burma, 3 I. T. C. 416.

Court. The High Court on civil side having held the sum not to be income, the assessee applied for its refund but was told that he should claim it against profits in the following year. Review was also disallowed and so was an application to state a case. On the assessee approaching the High Court under section 45, Specific Relief Act (1 of 1877) it was held, that the High Court had no power, in the circumstances, to compel a reference.¹

Where the assessee owning a ginning factory claimed deduction on account of baling expenses, at certain rate, but the Income-tax Officer allowed an amount calculated on his personal experience of the rate of expenditure incurred by other factories, it was held that no point of law was involved in the case and hence no reference was competent.²

The question of the valuation of the residential house is a question of fact.³

The assessee claimed certain losses as debitable to partnership account. In support of these losses he submitted a verified return, besides which there was his statement on oath before the Income-tax Officer as well as the entries in the partnership account books for the year in question. The Income-tax authorities held that the transactions claimed were premature. The assessee contested that there was an error of law and that a reference lay to the High Court. It was held, that the onus lay on the assessee to prove this contention that the debits were properly made in partnership

¹ Gulabrai Govindrai Firm v. Commissioner of Income-tax, C. P., 3 I. T. C. 315.

² Ibrahimbai Mulla Badrullah v. Commissioner of Income-tax, C. P., and Berar, 5 I. T. C. 302.

³ Sir Hari Singh Gour v. Commissioner of Income-tax, C. P. and Berar, 3 I. T. C. 333.

accounts as opposed to being personal ones of his own, that the onus was not sufficiently discharged by the verified return and statement on oath and that the assessee, when called upon to produce evidence in support of his return under section 23 (2), having failed to do so, no error of law was committed in the circumstances and that hence no reference could be made to the High Court.¹

The question of nonproduction of accounts before the Income-tax Officer is a question of fact.²

The question what is or is not income, profit, or gain is a question of fact.³

Where an assessee has profits earned more than three years prior to the year of assessment and also profits earned within that period to his credit in a trade carried on by him outside British India, there is no presumption that a remittance made to him in British India of a sum which might fall in either set of profits is made from the earlier profits and not from the latter. The question is clearly one of fact.⁴

The question whether a person is a resident of a particular place is a question of fact.⁵ In another case it was held that "the question where an artificial person like a corporation resides is clearly not a pure question of

¹ Bhikaji Vankatesh & Co. v. The Commissioner of Income-tax, Nagpur, 2 I. T. C. 355; A. I. R. 1927 Nag. 283.

² Lohar Mal Uttam Chand v. The Commissioner of Income-tax, Punjab, 2 I. T. C. 30.

³ The firm Insurance Office v. Clark, 6 T. C. 59, 60.

⁴ S. K. R. S. L. Firm v. Commissioner of Income-tax, Madras, 2 I. T. C. 359; A. I. R. 1927 Mad. 772.

⁵ Karupprah Kangani v. Commissioner of Income-tax, Madras, 3 I. T. C. 282.

fact. It would not be so even in the case of an individual. It is a pure question of fact whether an individual was in a house on a particular day or on a particular series of days, but you cannot say whether those acts or presence are sufficient to make him a resident in that house until you know what in the eye of law is sufficient and is necessary to constitute residence. If that is true of an individual, it must be still more evidently true in the case of a corporation in which the word residence cannot in any very natural sense be applied. The question of pure fact must be decided in the same way whatever be the system of law in force, and whatever be the purpose for which it is necessary to decide it; but when you come to a question of residence, it is easily conceivable that under different systems of law, there might be different requisites to constitute residence, and even under the same system of law, residence for one purpose might be proved under certain circumstances which would not constitute residence for another purpose. We therefore have here to see what are the findings of pure fact, and then we have to apply to those the proper legal principles in order to see whether the true deduction from those facts is that the company resided in the realm."¹

Whether a fund set apart for a particular trust and so entered in the accounts and treated as a trust fund for several years can or cannot be held to be property held under trust or other legal obligation for a religious or charitable purpose within the meaning of section 4 (3) (i) is a question of fact. Also the question whether the dedication is real or merely colourable is a question of fact.²

¹ *The American Thread Company v. Joyce*, 6 T. C. 30.

² *Rm. Ar. Ar. Rm. Ar. Arunchalam Chettiar v. Commissioner of Income-tax*, 3 I. T. C. 38.

The question whether a particular receipt is a receipt of a casual or nonrecurring nature, or part of the business of the assessee so as to be taxable is a question of fact.¹ So also the question whether the profits that accrue to a person from an isolated transaction of a purchase and sale of certain properties is of a casual nature or part of the assessee's taxable profit is a question of fact.²

Whether a particular expense is incurred in the performance of the duties of an office or necessary for the business is a question of fact.³

The question whether the accounts maintained by the assessee are regular and proper is a question of fact. So also the question whether the accounts disclose the true income of the assessee.⁴

The charging of a flat rate does not raise a question of law, as it is only a mode of arriving at the income in the absence of properly kept accounts and depends on a finding of fact as the condition or reliability of accounts.⁵ It has been held that the inference that certain account books produced by the assessee are not complete because of the nonproduction of other account books, is a question of fact.⁶

The question whether on facts proved, the Income-tax Officer was justified in rejecting the accounts of the assessee

¹ Secretary, Board of Revenue, N. R. M. A. R. M. Arunachalam Chettiar, 1 I. T. C. 238; I. L. R. 47 Madras, 1971.

² 12 T. C. 245.

³ Nolder v. Wolters 15 T. C. 380.

⁴ Maharaja of Darbhanga v. Commissioner of Income-tax, Behar and Orissa, A. I. R. 1930 Pat. 81.

⁵ Dayaram Sobharam v. Commissioner of Income-tax, 2 I. T. C. 226.

⁶ Panna Lal v. Commissioner of Income-tax, 2 I. T. C. 432.

is a question of fact.¹ Similarly, a finding that certain accounts not produced before the Income-tax Officer in fact exist, and have been deliberately withheld by the assessee is a question of fact.²

The question whether an assessee has or has not produced all the books of account, is a question of fact.³ Whether there is a partnership or not, or whether a particular transaction is a joint venture or not is a question of fact.⁴ Whether or not a partnership exists is also a question of fact.⁵

Question of law and fact.—Sometimes it may be difficult to decide as to whether a question is a question of law or fact. In deciding whether a question, whether a man is carrying on a profession or not, is a question of law or a question of fact, Lord Sterndate, M. R. observed: "I do not know that it is possible to give a positive answer to that question, because it must depend upon the circumstances with which the court is dealing. There may be the circumstances in which nobody could arrive at any other finding than that the man was doing, was carrying on a profession; and therefore, taking it from the point of view of a judge directing a jury, or any other tribunal which has to find the facts, the judge would be bound to direct them that on the facts they could only find

¹ Muzzafar Ali v. Commissioner of Income-tax, 4 I. T. C. 4.

² Lachhmandas Babu Ram v. Commissioner of Income tax, 4 I.T.C. 61; T. M. M. Sankaralinganandar and others v. Commissioner of Income-tax, Madras, A. I. R. 1930 Mad. 209; 4 I. T. C. 226.

³ Lohar Mal Uttam Chand v. Commissioner of Income-tax, 2 I.T.C. 301.

⁴ 9 A. T. C. 332 at 337.

⁵ 14 T. C. 335; 11 T.C. 614.

that he was carrying on a profession. That reduces it to a question of law. On the other hand, there might be facts on which the direction would have to be given the other way. But between these two extremes is a question of degree; and where it becomes a question of degree, it is then undoubtedly, in my opinion, a question of fact; and if the Commissioners come to a conclusion of fact without having applied any wrong principle, then their decision is final upon the matter."

In the same case Scrutton L. J. said: ". . . Whether a man carried on a profession is in the last resort a question of fact. The reason why it appears to me to be so is this. In my view it is impossible to lay down any strict legal definition of what is a profession, because people carry on such infinite varieties of trades and business that it is a question of degree in nearly every case whether the form of business that a particular man carries on is, or is not, a profession. Accountancy is of every degree of skill or simplicity. I should certainly not assent to the proposition that as a matter of law, every accountant carries on a profession, or that every accountant does not. The fact that you may have some knowledge of law does not, in my view, settle whether a thing is a profession or not. Take the case that I put during the argument, of a forwarding agent. From the nature of his business, he has to know something about Railway Acts about the classes of risk that are run in sending goods in a particular way, and under particular forms of contract. It may or may not be sufficient to make this a profession. Other people may require rather more knowledge of law, and it must be a question of degree in every case. Take Mr. Justice Rowlatt's case of the photographer. Art is a matter of degree. All these cases which involve questions of degree seem to me to be eminently

question of fact, which the legislature has thought fit to entrust to the Commissioners, who have at any rate, from their very varied experience, at least as much knowledge, if not considerably more, of the various modes of carrying on trade, than any judge on the Bench."¹

Original order of Commissioner and Right of reference—Section 66 as it now stands allows a reference on a question of law arising under an original order under section 33 enhancing an assessment or otherwise prejudicial to him. Rulings in the case *Singseng Hin*,² *Kumar Sonat Kumar Roy*,³ and *Shaikh Abdul Kadir Marakayan & Co.*,⁴ in which it was held that no reference was allowed from an order under section 33 as then stood, are therefore now obsolete. But the amendment has no retrospective effect and does not apply to cases that had already become final.

Otherwise prejudicial to him.—These words are very wide and presumably cover all orders which adversely affect the assessee which are passed under the sections enumerated in section 66 (2).

Application for reference—Requirements of.—The conditions precedent to an application under section 66 (3)—

- (1) that the assessee should have made an application under section 66 (2) and
- (2) The Commissioner should have refused to state a case on the ground that no question of law arises.

¹ *Carrie v. Commissioner of Inland Revenue*, 12 T. C. 245.

² 89 I. C. 765.

³ 30 C. W. N. 831.

⁴ A. I. R. 1926 Mad. 31.

⁵ A. I. R. 1934 Lahore, 13.

Special provision is now made under section 66 (3A) for reference to High Court when the Commissioner rejects an application for reference as time barred. An application to the High Court should in such a case be confined to the question of limitation only. The ruling in A. I. R. 1932 Pat. 167 on this point to the contrary is therefore obsolete.

An application under section (66) (3) is not allowed in case no application is made under section 66 (2).¹ Nor is such an application allowed when an application made under section 66(2) is rightly rejected as time barred.² An appeal under section 31 or 32 is a condition precedent to the moving of the High Court in cases on which there could have been such an appeal.³ Where no order under section 31 or 32 is made there is no refusal under section 66 (2) and consequently no action can be taken under section 66 (3).⁴ An application under section 66 (3) is conditional on the Commissioner having refused to state a case.⁵ Nor will an application for the issue of a mandamus under this section be allowed for a question of law not raised before the Commissioner.⁶ Similarly, where the remedy of an assessee to move the Commissioner becomes barred for some default of his, section 66 (3) will not apply.⁷ A judgment which is not appealed against whether right or wrong, must govern the rights of parties. Even if the judgment is founded on a wrong

¹ Leony Moh & Co. v. Commissioner of Income-tax, Burma, 2 I. T. C. 103.

² A. I. R. 1932 Pat. 167.

³ *In re* Thrikanji Jiwandas, 1 I. T. C. 406 ; A. I. R. 1925 Pat. 352.

⁴ A. I. R. 1927 Oudh 466.

⁵ A. I. R. 1932 S. 224 ; A. I. R. 1928 Bom. 434.

⁶ A. I. R. 1928 Rang. 281.

⁷ A. I. R. 1926 Lahore, 400.

construction of the Act, it cannot be corrected in any other manner than the one provided by law. So where an appeal is competent, but none is preferred, there is no further remedy.¹ Similarly where an appeal to the Assistant Commissioner is rightly dismissed as barred by limitation, and the Assistant Commissioner refused to condone the delay in filing the appeal, no reference can be made to High Court.² An application for a reference made after the expiry of the period of limitation is liable to be rejected unless it can be given under the provisions of the newly added section 66 (A).³

It has been held that in computing the period of limitation the assessee is entitled to deduct the time required for obtaining a copy of the order complained against.⁴ Similarly in computing the period of limitation, the date on which the order was pronounced is excluded.⁵

It was held that on general principles and in view of section 29 of Limitation Act, which liberally construed provides for the application of section 12 of the Limitation Act "for the purpose of determining any period of limitation prescribed for any suit, appeal, or application by any special or local law," an assessee is entitled to have the benefit of the

¹ A. I. R. 1934 P. C. 44 ; 1934 A. L. J. 165.

² C. A. M. K. Kasi Chettya v. the Commissioner of Income-tax, Burma, 2 I. T. C. 98.

³ Banji Lal *In re* 2 I. T. C. 97.

⁴ Moban Hardeo Das v. the Commissioner of Income-tax, Behar and Orissa, 4 I. T. C. 90 ; Ramanadho Reddiar v. the Commissioner of Income-tax, 3 I. T. C. 10 ; A. I. R. 1930 Pat. 14 ; Mohammad Hayat Haji v. Commissioner of Income-tax, Punjab, 3 I. T. C. 319 ; A. I. R. 1929 Lahore 170 ; A. I. R. 1928 Rang. 152.

⁵ Husain Bhoj Mohammad Bhoj v. Commissioner of Income-tax, Bombay, 5 I. T. C. 31.

time spent in obtaining a copy of the order with which he is dissatisfied and on which he seeks a case to be stated.¹

The starting point of limitation is now the date on which the order complained of is served on the assessee and not the date on which the order was pronounced or passed. The ruling in 4 I. T. C. page 90 above referred to, is no longer good law so far as the contrary view expressed therein on this point is concerned.² Now time for an application for a reference would begin to run from the date on which the order was communicated to the assessee.³ But it would appear the mere fact that the Commissioner in refusing to state a case, does not clearly state that he rejects the application as time barred, would not prevent the operation of the statute of limitation, and if the application is in fact time barred, no application would lie to the High Court.⁴

Where the assessee made an application for a copy of the order of Assistant Commissioner, but the application was rejected as defective, and he took no further steps in the matter till after the expiry of the period of limitation, and his application for a reference was rejected by the Commissioner as time barred, it was held that the assessee was not entitled to move the High Court.⁵ Limitation cannot be extended by an executive order.⁶

¹ Firm Mohan Hardeo Das v. the Commissioner of Income-tax, Bihar and Orissa, A. I. R. 1930 Pat. 14 ; 4 I. T. C. 90 ; A. I. R. 1929 Lahore 170.

² A. I. R. 1934 Pat. 14.

³ A. I. R. 1930 Sind 301.

⁴ Hukam Chand Hardat Rai v. Commissioner of Income-tax, Bihar and Orissa, 2 I. T. C. 140.

⁵ Ganesh Das Kallu Ram v. Commissioner of Income-tax, Bihar and Orissa, 4 I. T. C. 387 ; A. I. R. 1932 Pat. 167.

⁶ A. I. R. 1928 Rang. 152 ; A. I. R. 1927 Mad. 545.

By section 66 (A) section 5 of the Limitation has now been made expressly applicable to an application to the High Court under sub-section (3) or sub-section (3-A). The ruling in Lakshmi Sewak Sahu's case¹ and other cases,² which held the contrary view is no longer good law on the subject. It would appear that by section 66 (7A) section 5 of the Limitation Act has been made applicable only to an application to the High Court. Lakshmi Sewak Sahu's case lays down the principle that section 5 of the Limitation Act does not apply to the periods of limitation provided by the Income-tax Act. It would appear that in respect of periods of limitation prescribed for other purposes section 5 of the Limitation Act would not be applicable.

Sections 29, 12 and 5 of Limitation Act run as follows:—

5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Extension of period in certain cases.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion of time in legal proceedings.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment,

¹ 6 I. T. C. 142.

² 2 I. T. C. 140 and 199.

the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

29. (1) Nothing in this Act shall affect section 25 of the Indian Savings. Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law ; and

(b) the remaining provisions of this Act shall not apply.

(3) Nothing in this Act shall apply to suits under the Indian Divorce Act.

(4) Sections 26 and 27 and the definition of "easement" in section 2 shall not apply to cases arising in territories to which the Indian Easement Act, 1882, may for the time being extend.

Fee.—A fee of Rs. 100 is to accompany each application for reference to the High Court. The fee as well as the application must be deposited within time. If the fee is not deposited within the period of limitation, the application is to be rejected as barred by limitation.

Only one fee is to be paid for a case, even though several questions of law may be raised.¹

But one fee is payable for an application made by one person. Assesseees, being four divided members of a Hindu family, no longer joint, were separately assessed individually. Being dissatisfied with the appellate order of the Income-tax Commissioner, they submitted one combined application, accompanied with a single fee of Rs. 100 requesting the Commissioner to state a case to the High Court. The Commissioner refused to admit the application as it was made, and gave them opportunity to file proper applications with separate fee. After the expiry of the period of one month, their Vakil requested the Commissioner to treat the petition of reference and the fee as one made on behalf of a particular assessee out of the four. On the Commissioner refusing to do so and state the case a mandamus was issued by the High Court and case stated. It was held, that the application as originally made was defective and the fee accompanying it insufficient and that as they were separately assessed their cases must be separately stated and they must pay a fee of Rs. 100 for each case. It was further held, that there was no proper application before the Commissioner for his taking action in the case of one of the applicants, as also, that the provision in the statute as to time was a fixed and express one and that there was no provision in the statute for any official or even for the Court to extend the time.²

The fee of Rs. 100 which must accompany an application under section 66 (2) forms part of the costs and is

¹ 5 A. R. A. R. S. M. Somasundaram Chettiar v. Commissioner of Income-tax, Burma, 2 I. T. C. 61 ; 1 I. T. C. 392 ; A. I. R. 1935 Rang. 94.

² Mothay Ganga Raja and others, A. I. R. 1927 Mad. 63, 171 ; 2 I. T. C. 199.

incidental to the reference, which the court may award in a proper case against the assessee.¹ In calculating costs awarded from the assessee when the same are allowed against him credit must be given for this sum.² Similarly, where costs are awarded to an assessee in a reference before the High Court, the sum of Rs. 100 deposited by the assessee will be treated as part of his costs and taxed as such.³

A subsequent application to have the amount of costs reduced shall not be entertained. Costs shall be determined before the final order is drawn up.⁴

Where the assessee had made no allotment between principal and interest in his account books and the question, "was there evidence before the Income-tax Officer on which he should have held that half the principal loan should be set off against realization in computing the profits of the previous year," after being referred to the High Court, was withdrawn, but the question of costs was pressed on the ground that there were materials before the Assistant Commissioner on which he should have split up the debt between two debtors and allowed the assessee a set off of half the debt in respect of the debtor who had made a payment in the year of assessment in discharge of his entire debt, it was held that the assessee was entitled to costs and costs were accordingly awarded.⁵

¹ A. I. R. 1934 Rang. 197 F. B.

² Lachmandas Baburam v. Commissioner of Income-tax, U. P., 7 I. T. L. J. page 115 ; A. I. R. 1933 All. 853 ; 1933 A. L. J. 942.

³ *In re Radhey Lal Balmukund*, 1930 A. L. J. page 1548 ; A. I. R. 1931 All. 23 ; *Lakshmi Sewak Sahu v. Commissioner of Income-tax, U. P.*, 6 I. T. C. 142.

⁴ A. I. R. 1925 All. 403 ; 1 I. T. C. 416.

⁵ *In re Surya Prasad Mahajan v. Commissioner of Income-tax, Behar and Orissa*, 5 I. T. C. 399.

Right to begin.—The assessee in a reference before the High Court has a right to begin and also a right of reply.¹ But in a reference by the Commissioner *suo motu*, the counsel for the Commissioner has a right to begin.²

Court fee.—No court fee is mentioned as payable on a reference under section 66 Income-tax Act, in Schedule I or Schedule II of the Court Fees Act or section 4 of the said Act. No court fee is therefore payable on a reference.³ Similarly, documents produced with a reference under this section by the Commissioner are exempt from court fee.⁴

Duties of Commissioner.—It is for the Commissioner to state formally the question of law for the decision of the High Court.⁵ The Commissioner should set out specifically the question of law on which it is sought to obtain a determination from the High Court.⁶ The Commissioner is required to give his own opinion about the case. In giving an opinion, the Commissioner is to confine himself to the points referred. The Commissioner is not required to give reasons for making a reference.⁷

In stating a case the Commissioner has to find all facts which are relevant to enable the High Court to decide the

¹ *Khemchand Ram Das v. The Commissioner of Income-tax, Bombay*, 6 I. T. C. 360; A. I. R. 1932 Sind 1 following 1 I. T. C. 54; 7 I. T. L. J., page 400; *In re Valley Tea Co.*, 48 Cal. 161.

² *Darabsha Nasrawanji Mehta v. Commissioner of I. T., Bombay*, 1935 I. T. L. J. page 62.

³ *Khem Chand Ramdas, In re* 6 I. T. C. 360; 7 I. T. L. J. page 400.

⁴ A. I. R. 1933 Sindh 148.

⁵ A. I. R. 1934 Sind 464.

⁶ 12 Rang. 633; A. I. R. 1931 Cal. 543.

⁷ A. I. R. 1931 Cal. 543.

question or questions of law for its decision¹ and then to state the point or points of law with his own opinion thereon.² The findings of fact arrived at by the Commissioner should be definite and adequate.³

In an application under section 66 (2) for statement of a case and reference to the High Court, the Income-tax Commissioner should write a judgment, so to say, giving his reasons for the conclusion to which he comes. If part of the conclusion to which he comes is that it is right to refer a certain question to the High Court, then he ought in strictness, to make out another document, i.e., a statement of the case, upon that point to the High Court's opinion.

If the Commissioner thinks that there is a point of law proper to be referred he is not bound to refuse merely by reason that the assessee has not framed it properly. He can frame it properly himself and then refer it (case remitted back, where this was not done.⁴ The statement of questions of law under section 66, should not in an abstract form be divorced from the facts of the particular case.⁵

¹ *Gangasagar Ananda Mohan Sahai v. The Commissioner of Income-tax, Bengal*, A. I. R. 1928 Cal. 836; 3 I. T. C. page 1.

² A. I. R. 1927 Pat. 390.

³ *Ahmadabad New Cotton Mills Ltd. v. The Commissioner of Income-tax, Bombay*, A. I. R. 1928 Bom. 519; 3 I. T. C. 91, 104; *Remington Typewriter Co. v. The Commissioner of Income-tax, Bombay*, 3 I. T. C. 166; A. I. R. 1928 Bombay 465.

⁴ *Krishana Kumar & Mohindra Kumar Ghose v. Commissioner of Income-tax, Bengal*, A. I. R. 1931 Cal. 13; 5 I. T. C. 295.

⁵ *Raja Raghunandan Prasad Singh v. The Commissioner of Income-tax, Bihar and Orissa*, 7 I. T. L. J. page 17; 6 I. T. C. page 392; I. L. Q. Pat. Vol. 12, page 305.

It is desirable that the questions of law, which the Commissioner refers to the High Court should for convenience of reference be numbered consecutively at the end of the case stated for the decision of the High Court.¹ The statement of a case should be confined to findings of fact, the questions of law to be determined and the opinion of the Commissioner on such questions of law.²

It has been held that it is desirable that the assessee should formulate the questions of law which he wishes to be referred to the High Court.³

But it is not obligatory on the assessee to formulate precise questions of law. What he is to do is to require the Commissioner to refer to the High Court any question of law arising out of the order or decision of the Assistant Commissioner, and then the Commissioner has, within 60 days, to draw up a statement of the case, and refer it, with his own opinion, to the High Court. The High Court is no more limited than is the Commissioner to the precise questions formulated by the assessee.⁴

The Commissioner has to deal with an application under this section himself. He has no power to delegate his functions to any authority subordinate to him.⁵

Powers of High Court.—The powers of the High Court are confined, on a reference under this section, only to

¹ The Commissioner of Income-tax, Behar and Orissa v. Kameshwar Singh of Darbhanga Maharaja Dhiraj, 7 I. T. L. J. page 29; 6 I. T. C. 401; 12 I. L. R. Pat. 318; A. I. R. 1933 Pat. 108 P. C.

² A. I. R. 1922 All. 299; A. I. R. 1929 All. 819.

³ Debidas Madan Lal v. The Commissioner of Income-tax, U. P., 1934 I. T. L. J. page 244; 7 I. T. C. 132.

⁴ Vadilal Lallubhai Mehta v. Commissioner of Income-tax, Bombay, 1935 I. T. L. J. page 74.

⁵ A. I. R. 1924 Lahore 662.

consideration of the question propounded in the order of reference.¹ Also where the several questions are referred to the High Court for decision and it is found that the answer to only one of them is enough to dispose of the case, the High Court shall not decide the remaining questions.²

The High Court has no power to upset a finding of fact arrived at by the Commissioner.³ Nor can the assessee ask the High Court to examine his account books which were not produced before the Income-tax Authorities.⁴

The High Court has, however, jurisdiction to amend the issues referred to it.⁵ It has power to find out for itself the question or questions of law arising for determination and then to answer them.⁶ In another case it has been held that under section 66 (5) the duty of the High Court is to "decide the question of law raised" by the case referred to them by the Commissioner and it is for the latter to state formally the questions which arise.

Where the High Court itself formulated the question to be decided, Their Lordships of the Privy Council deprecated this departure from the regular procedure.

It is desirable that the questions of law which the Commissioner refers to the High Court should, for convenience

¹ N. N. Burjorejee v. The Commissioner of Income-tax, Burma, 5 I. T. C. 270; A. I. R. 1931 Rang. 101.

² A. I. R. 1932 P. 1 F.B.; The Commissioner of Income-tax, Bihar and Orissa v. Kameshwar Singh of Darbhanga, 7 I. T. L. J. page 29; 12 A. I. R. Pat. 318; 6 I. T. C. 401.

³ 1931 A. L. J. 878.

⁴ A. I. R. 1931 Cal. 682.

⁵ A. I. R. 1931 Bom. 448.

⁶ A. I. R. 1933 All. 17; 1932 A. L. J. 389; 6 I. T. C. 105.

of reference, be assembled and numbered consecutively at the end of the stated case.¹

Where, however, the petition to the Commissioner for stating a case did not raise the real point of law involved and the Commissioner stated the case on point of fact; held, the High Court can look into the facts and re-settle the issues, as it were, and decide the issue of law that properly arose on the statement.² So also the High Court is empowered to reframe the questions referred to it and to answer them.³ The High Court is even empowered to ask the Commissioner to submit fresh findings of fact, when such findings are necessary to enable the High Court to decide the question or questions of law correctly.⁴ The grounds mentioned in the opinion of the Commissioner are not binding on the High Court and the High Court is entitled to go through the whole record for a proper determination of the question raised.⁵

There is no warrant in section 66 for the extreme contention that that High Court has no power to find out for

¹ *The Commissioner of Income-tax, Bihar and Orissa v. Maharaja Dhiraj Kameshwar Singh of Darbhanga*, 6 I. T. C. 401; A. I. R. 1933 P. C. 108.

² *In re Ganga Sagar*, 5 I.T. C. 142; A. I. R. 1929 All. 919; 1930 A. L. J. 26.

³ *Jai Dayal Madan Gopal*, 7 I. T. C. page 88; 6 I. T. C. 226; *In re Bhagwati Prasad*, 7 I. T. L. J. page 66; 6 I. T. C. 105; *Biradhamal v. The Commissioner of Income-tax, U. P.*, A. I. R. 1934 All. 217; A. I. R. 1932 All. 680; 1932 A. L. J. 999; *Firm Khemchand Ram Das v. The Commissioner of Income-tax, Bombay*, 1934 I. T. L. J. page 81.

⁴ A. I. R. 1929 Cal. 753; A. I. R. 1929 All. 819.

⁵ *The National Mutual Insurance Co.*, 7 I. T. L. J. page 129; 6 I. T. C. 426; *Imperial Chemical Industries Ltd. v. Commissioner of I. T. Bengal*, 1935 I. T. L. J. page 98.

itself, what are the substantial question of law that have arisen between the parties and that it is bound either to answer such questions as have been put to it by the Commissioner of Income-tax or send back the case to him to make a fresh statement in the case.

The High Court has only to accept the facts found by the Commissioner and, if necessary, may call for more facts by asking him to make a fresh statement of them under section 66 (4), but that, it is for the High Court to find from the contention of the assessee on the one hand and that of the Income-tax authorities on the other, what is the real point of law that arises between the parties and what it has to decide, and that the High Court is nowhere in the section called upon to decide such questions as may be framed by the Commissioner of Income-tax.

On a true reading of the section and all its sub-sections, it is clear that, although ordinarily the Income-tax Commissioner would be the officer who would frame the points of law that arise in the case stated by him, and although he would be expected to give his opinion on them for the benefit of the High Court, the section requires the High Court to decide the questions of law that arise, i.e., it is entitled to re-settle issues, as it were and decide these issues. Of course, the issue would all be questions of law.¹

The High Court will not, however, express an opinion on a hypothetical question, although it may involve a question of law.² Nor can the High Court consider questions of

¹ Shiv Prasad Gupta v. Commissioner of Income-tax, U. P., A. I. R. 1929 All. 819 ; 3 I. T. C. 406 ; A. I. R. 1929 Cal. 753.

² *In re* Babu Mooljee Sicka, 1934 I. T. L. J. page 117; 7 I. T. C. 190.

law which were never raised before the Income-tax authorities.¹

Nor can a reference be made to the High Court on a question not referred to by the objectors in their petition before the Commissioner.²

The High Court has no jurisdiction, on an application by the assessee under section 66 (3), to order the Commissioner of Income-tax to state a case and refer any question of law for consideration by the High Court which the assessee has not duly required the Commissioner to refer under section 66 (2).³

On a true reading of section 66, it does not mean that the assessee is entitled to argue any question of law which may arise out of assessment and which he has not asked the Commissioner to refer to High Court but that the High Court, if it chooses, can alter the questions referred by the Commissioner or reject them altogether, and decide the real questions of law at issue between the Commissioner and assessee at the time when application was made to him to refer the question or questions.

Section 45 Specific Relief Act also is of no avail to an assessee to enable him to have a question not referred to the High Court decided.⁴

¹ Radhelal Balmukund v. The Commissioner of Income-tax, U. P., 4 I. T. C. 454; 1930 A. L. J. 1548; A. I. R. 1931 All. 23.

² *In re* Lalla Mal Hardeodas Cotton Spinning Mills, A. I. R. 1924 All. 137; 21 A. L. J. 703; 1 I. T. C. 216.

³ Commissioner of Income-tax, Burma v. C. A. I. R. Chettyer Concern, Pangdye, A. I. R. 1934 Rang. 132.

⁴ S. A. S. Subbiah Iyer v. The Commissioner of Income-tax, Madras, 4 I. T. C. 345; A. I. R. 1930 Mad. 449.

Thus where three of the points sought to be referred by the assessee had been disallowed, only two having been referred by the Commissioner, the High Court is seized only of the points referred to the Commissioner and cannot allow the disallowed points to be argued, the assessee's remedy being to apply within time prescribed under section 66 (3) and the High Court is not competent to entertain the disallowed points after the expiry of the period prescribed for an application under section 66 (3).¹

In a reference to the High Court by the Commissioner, only the question of law filed within one month of the appellate order under section 31 or 32 of the Act can be referred, any such question not filed within one month not being such as could be referred.²

Similarly, where the Commissioner refuses a reference to the High Court on certain points as unnecessary or incompetent, and no application is made to High Court under section 66 (3), the High Court is not competent to consider the question on points so referred.³

The High Court has no jurisdiction to require the Commissioner to state a case and refer a question for its consideration, which the assessee has not duly required the Commissioner to refer under section 66 (2).⁴ It is but reasonable that

¹ N. D. Radha Krishan & Sons v. The Commissioner of Income-tax, Punjab, 3 I. T. C. 73.

² Raghunath Das Sewlal v. The Commissioner of Income-tax, Bengal, 4 I. T. C. 468; A. I. R. 1932 Cal. 411.

³ Moulana M. E. R. Malak v. The Commissioner of Income-tax, C. P., 2 I. T. C. 443; A. I. R. 1928 Nag. 10.

⁴ A. I. R. 1934 Lahore 97; A. I. R. 1934 Rang. 1631; C. P. L. E. Chettyar Concern v. Commissioner of Income-tax, Burma, 1934 I. T. L. J. 148; 7 I. T. C. 200.

where an assessee neglects to ask the Commissioner to state the case, he shall not be allowed to approach the High Court to direct the Commissioner to state the case. Nor such application would be entertained by the High Court, even though the question may be of great importance.¹ The preliminary requirement of this section must be strictly complied with before an application can be entertained by the High Court.² Similarly, the High Court will not consider a point of law not raised before the Assistant Commissioner or the Commissioner by the assessee.³ Devices to introduce new matters in a reference made under section 66 (2) shall not be encouraged.⁴ But where a reference has been made to the Commissioner the High Court has jurisdiction to decide what are the questions of law that arise and frame an additional question on the point or points referred.⁵

It is open to the High Court when hearing a case on the statement of the Commissioner to decide what are the questions of law which arise, though any particular point may not have been put in the form of a definite question, provided the statement of the case shows that such a question arises on the face of it and calls for decision.⁶ The

¹ A. I. R. 1930 Mad. 449.

² A. I. R. 1930 P. C. 151.

³ A. I. R. 1931 All. 23; 1930 A. L. J. 1548; A. I. R. 1930 Rang. 78; *Sind Light Railway Co. Ltd. v. The Commissioner of Income-tax, Bombay*, 7 I. T. L. J., page 370; 6 I. T. C. 271; A. I. R. 1932 Sind, page 189.

⁴ A. I. R. 1931 Cal. 727.

⁵ A. I. R. 1934 All. 217; 1934 A. L. J., page 348; A. L. R. 1934 Sind 61.

⁶ *In re Budhamal*, 7 I. T. L. J. 63.

assessee's application for a reference must state all questions of law desired to be referred to High Court.¹ But where an application is duly made to the Commissioner, but the Commissioner does not pass any order on it, the High Court can interfere and require the Commissioner to state a case.² The ultimate authority on the question whether or not proceedings before the Assistant Commissioner are *ultra vires* or not is the High Court and not the Income-tax Commissioner.³ But once a question of law is decided by the High Court, it should not be again referred in another case or in assessment proceedings in a succeeding year.⁴ But an assessee can move the High Court to require the Commissioner to refer to High Court questions of law though not raised before the Commissioner, yet which arise from his order.⁵

In another case it was held that when a party desires the Commissioner to refer a question of law to the High Court under section 66 (2), Income-tax Act, such question is to be formulated by that party and on an application under sub-section (3) of section 66, it is open to the Court to direct the Commissioner to refer some question other than that which the party has formulated, but generally the Court should be slow to go outside the question asked by the party.⁶

¹ A. I. R. 1926 Lahore 168.

² A. L. R. 1924 Lahore 662.

³ A. I. R. 1933 Sind 158; Khemchand Ramdas v. Commissioner of Income-tax, Bombay, 7 I. T. L. J., page 393; A. I. R. 1934 Sind 46; A. I. R. 1927 All. 299; 25 A. L. J. 225.

⁴ A. I. R. 1932 Nag. 68; 1934 I. T. L. J. page 82.

⁵ A. I. R. 1929 Nag. 243.

⁶ A. I. R. 1934 Bombay 378.

Review.—No application for a review is maintainable in respect of the order of the High Court passed on a reference under this section.¹

An order for a case to be stated is in the nature of what is known as the issue of a rule nisi to show cause on certain questions indicated in the order made by the High Court and that the Commissioner or other authority in stating the case, in effect, shows cause against the contention of the other side, and, as such he is clearly at liberty to take objection that under the law there was no power to issue the rule or to direct the case to be stated and, that, therefore, the High Court had no jurisdiction to decide the question raised in the case.

The objection, it was further held, should in strictness be taken at the time when the question whether it was a fit case in which a case ought to be directed to be stated was discussed and the High Court made the order after notice to Commissioner.²

Letters Patent Appeal.—The decision of a Court made under section 66 of the Income-tax Act, 1922, does not amount to a “judgment” within the meaning of clause 10 of the Letters Patent (Lahore) and that no Letters Patent appeal is competent from the decision of a single judge.³

¹ Kajori Mal Kalyan Das v. The Commissioner of Income-tax, U. P., 4 I. T. C. 6 and A. I. R. 1931 All. 211.

² Dina Nath Hemraj v. The Commissioner of Income-tax, U. P., A. I. R. 1927 All. 299; 25 A. L. J. page 225; 2 I. T. C. 304.

³ Bulaqi Shah & Son v. The Collector of Lahore, 1 I. T. C. 401; A. I. R. 1925 Lahore 336; Probhat Chandra Barua v. Emperor, 1 I. T. C. 414; A. I. R. 1925 Cal. 598.

Abatement.—Proceedings in connection with a reference under section 66 of the Act, not being a suit, no question of abatement arises and the reference should be heard, whether or not the assessee's heirs appear before the High Court.¹

Reference to Full Bench.—Where the judges of a division bench of a High Court, hearing a reference, differ on a point of law and after signing judgments and expressing different opinions refer the matter to a larger bench through the Chief Justice, and a Full Bench is thereupon constituted to hear it, it was held that the reference was not invalid, in view of section 66 (3) of the Act or section 98 C. P. Code, notwithstanding anything contained in the Letters Patent of the High Court, that the bench did not become *functus officio* thus leaving no majority and the Commissioner's opinion to prevail and that the matter was one, after all, of the intention of the judges.² Where two judges, who heard a reference under section 66 (3) of the Income-tax Act, gave different judgments, but agreed to refer the matter to a larger Bench through the Chief Justice, the Chief Justice referred the matter to a Full Bench.³

Clause 16 of the Letters Patent of the Calcutta High Court is applicable in case of a difference of opinion between judges hearing reference.⁴

Limitation.—In an application to the High Court under section 66 (3), for stating a case, time shall be computed

¹ Maharajadhiraj of Darbhanga v. The Commissioner of Income-tax, Behar and Orissa, 4 I. T. C. 283; A. I. R. 1930 Pat. 81.

² Dr. Umar Baksh v. The Commissioner of Income-tax, Punjab, 5 I. T. C. 402; A. I. R. 1931 Lahore 578.

³ A. I. R. 1933 Lahore 518 F.B.

⁴ A. I. R. 1924 Cal. 668.

from the date of the order of the Commissioner refusing to state a case. The words "such order" in section 67-A refer to the order of the Commissioner refusing to state a case and not to the orders of the Income-tax Officer or the Assistant Commissioner and, consequently, time spent in obtaining copies of these two orders is not to be excluded. The provisions of section 12 Limitation Act do not apply to proceedings under section 66 of the Act.

While it is a fact that Rule 1 of the Rules framed for procedure by the Allahabad High Court in regard to Income-tax reference, requires that copies of the Income-tax Officer and the Assistant Commissioner's orders also should accompany an application under section 66 (3), this does not mean that the applicant can extend the period of limitation by the period required for obtaining these copies.¹

Where the application of an assessee to the Commissioner is barred by time, he cannot move the High Court.²

Objection to reference—The Commissioner cannot object to a reference at the time of hearing before the High Court in cases the order requiring the Commissioner to state a case is made after hearing him.³ Any objection to the competency of the High Court to issue mandamus should be made at the hearing of application made under section 66 (3) and the order passed on the application to

¹ Gulab Chand Chotey Lal & others v. The Commissioner of Income-tax, U. P., 5 I. T. C. 273; A. I. R. 1931 All. 673.

² A. I. R. 1926 Lahore 400.

³ A. I. R. 1932 Nag. 65.

state a case cannot be questioned at the time of hearing of reference.¹

Nor can the validity of an order requiring the Commissioner to state a case be questioned by a Bench of the High Court.²

Duty of Commissioner after reference to High Court.—After a reference by the Commissioner of Income-tax has been answered by the High Court, it is the duty of Income-tax Department to take up the question of re-assessment, in the presence of the assessee, after notice to him, in the light of the judgment of the High Court, although, as the result of the judgment, the actual assessment may be adverse to the assessee.³

Question of law and procedure.—The provisions of Income-tax Act authorize the High Court to decide questions of law which arise in the case. But questions of law must be distinguished from the errors of procedure, which allow interference by the High Court in second appeal. It is only a question of law that can be decided by the High Court.

Where on facts the grant of further time to the assessee for statement and evidence is refused by I. T. O. it was held that no question of law was involved.⁴

Can application for reference be made over to subordinate officers.—Where, on the application of an assessee,

¹ Firm Gopal Chand Jagannath v. Commissioner of Income-tax, Punjab, 2 I. T. C. 180 ; A. I. R. 1926 Lahore 446.

² Khemchand Ram Das v. The Commissioner of Income-tax, Sind, A. I. R. 1934 Sind 46 ; A. I. R. 1926 Lahore 446.

³ Basant Rai & others v. The Commissioner of Income-tax, U. P., 5 I. T. C. 441.

⁴ Sir Hari Singh Gour, 5 I. T. C. 317 ; 7 I. T. L. J. 290.

under section 66 (2), to state a case for reference to the High Court, the Commissioner, instead of accepting or rejecting the application referred it to the Income-tax Officer for disposal who withheld it, it was held, the Commissioner had no power under the law to refuse to pass any orders on the application, or to delegate his authority to a subordinate officer, that the refusal by the Commissioner to state the case, whatever may be the grounds for it, tantamounts to a refusal on the ground that there is no question of law involved and that the High Court, if not satisfied of the correctness of the Commissioner's order, has the power to require the Commissioner to state the case, that the proper course in such a case would be to refer the case back to the Commissioner with a direction that he should proceed according to law and should either draw up a statement of the case for reference to the High Court or reject the petition on the ground that there was no question of law involved.¹

Judgment of High Court—Conclusive inter partie.— Under section 66 (5) the judgment of the High Court on reference is to contain the grounds on which the decision is founded, that a copy of the judgment is to be sent to the Commissioner and that the case is to be disposed of by the Income-tax authorities conformably to such judgment that, as such, the judgment, if not appealed against, is binding on the parties and that if the judgment contained a wrong exposition of the Act, in the eye of the party, the only way to get it corrected was to appeal.²

¹ Gokal Chand Jagannath v. Collector of Income-tax, Sialkot, 1 L.T.C. 260; A. I. R. 1924 Lahore 662.

² Commissioner of Income-tax, U.P. v. Tebri Garhwal State, A. I. R. 1934 P. C. 34.

Oudh Chief Court.—The Oudh Chief Court is a High Court for the purpose of references under section 66, Income-tax Act in view of the Oudh Courts Act 1925, section 3, and the United Provinces General Clauses Act 1904, section 4, para 21.¹

Difference between Judges hearing reference.—Where a reference under section 66 is decided by a Division Court of two judges, it is the opinion of the senior judge that is to prevail, in view of Cl. 36 of Calcutta Letters Patent.² Section 98 of C.P.C. also now applies to a reference under section 66.

Meaning of High Court.—In view of section 3 of the General Clauses Act, 1897 “High Court”, used with reference to civil proceedings, being the highest Civil Court of Appeal in the part of the British India in which the Act or Regulation containing the expression operated, and Income-tax proceedings being civil proceedings, the High Court would be the Judicial Commissioner of the North-West Frontier Province for matters relating to that province, and not the Lahore High Court, which had no jurisdiction to entertain the reference.³

Bombay High Court—No jurisdiction over Sind.—The Bombay High Court has no jurisdiction over Sind under section 66 of Income-tax Act.

Where a case, if stated by the Commissioner of Income-tax, would have to be referred to the Court of

¹ The Lucknow Ice Association v. The Commissioner of Income-tax, U. P., A. I. R. 1926 Oudh 191; 2 I. T. C. 156.

² Emperor v. Probbat Chandra, 1 I.T. C. 284; A. I. R. 1924 Cal. 668.

³ Tora Gul Boi v. The Commissioner of Income-tax, Punjab and N. W. F., A. I. R. 1927 Lahore 512; 2 I. T. C. 164.

Judicial Commissioner in Sind for decision, it would not be right for the Bombay High Court in the exercise of its discretion to make an order under this section requiring the Commissioner to state a case to it, even if the Bombay Court has jurisdiction to do so by reason of that the Commissioner resides in Bombay.¹

Where the assessment was originally made in Sind by the Income-tax Officer at Karachi and the assessee had its registered office in Sind, though the assessment was made by the Income-tax Commissioner at Bombay, yet the Court for the purpose of reference under section 66 (1), was the Judicial Commissioner of Sind and not the Bombay High Court, in view of section 1 of the Sind Courts Act, Bombay (XII of 1886) and section 1 of the Government of India Act V of 1872.²

In Bombay an application under section 66 (3) cannot be permitted to be converted into one under section 45 Specific Relief Act in view of the original side under Rule 536 of Bombay High Court Rules as revised in 1924.³

Discontinuance of or succession to business and reference to High Court.—The question whether or not there has been a succession in a particular case is a question of fact.⁴ Discontinuance like succession is a question of fact. So the question, whether a particular business has been discontinued and a fresh business started, or that a new

¹ A. I. R. 1931 Bom. 150.

² The Indian Life Assurance Co. Ltd. v. the Commissioner of Income-tax, Bombay, A. I. R. 1931 Bombay 150; 5 I. T. C. 98.

³ Madhavdas Jetha Bhai v. the Commissioner of Income-tax, Bombay, A. I. R. 1928 Bom. 434; 3 I. T. C. 224.

⁴ Lachmandas Baburam v. the Commissioner of Income-tax, 4 I. T. C. 61.

business is identical with the old business is a question of fact.¹

SPECIFIC RELIEF ACT AND HIGH COURT

Section 45 (Specific Relief Act).—Any of the High Court of Judicature at Fort William, Madras, Bombay and Rangoon may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature :

Power to order public servants and others to do certain specific acts.

Provided—

- (a) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act ;
- (b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character ;
- (c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice ;
- (d) that the applicant has no other specific and adequate legal remedy ; and
- (e) that the remedy given by the order applied for will be complete.

Exemption from such power. Nothing in this section shall be deemed to authorize any High Court—

- (f) to make any order on the Secretary of State for India in Council, on the Governor-General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, on the Governor in Council of Fort William in

¹ Michael Faraday, Rodgers & Eller I. Contra 1 I. T. C. 569 at 574.

Bengal, or "on the Governor of Burmah in Council" (Added by Act X of 1927, section 2 (1st schedule)).

- (g) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown ; or
- (h) to make any order which is otherwise expressly excluded by any law for the time being in force.

It is well settled that the jurisdiction of the High Court to make order under section 45 of the Specific Relief Act is entirely discretionary and in dealing with application under chapter VIII (which deals with the Enforcement of Public Duties, the principles applicable to a writ of mandamus should, generally speaking, be followed.¹ The writ is of a very ancient origin, dating back at any rate, to the time of Edward II. In Bacon's Abridgment it is said to be founded on Magna Charta, by which the Crown was bound neither to deny justice to anybody nor to delay anybody in obtaining justice.

In discussing the applicability of section 45 to income-tax proceeding Lord Phillimore observed :—

"To argue that if the Legislature says that a public officer, even a Revenue Officer, shall do a thing, and he without cause or justification refuses to do that thing, yet the Specific Relief Act would not be applicable, and there would be no power in the court to compel him to give relief to the subject, is to state a proposition to which Their Lordships must refuse assent. Section 45 of the Specific Relief Act enables any of three High Courts to make an order requiring any specific act to be done or forborne by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature ; provided that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or court in his or its public character, or on 'such corporation in its corporate character' and subject to other certain conditions not material to this case.

¹ Board of Examiners v. Proves Ch. Roy, 17 C. W. N. 1225 ; Mohindra v. Proves, A. I. R. 1924 Cal. 761.

“ It is true that the section is not to authorise the High Court ‘to make any order which is otherwise expressly excluded by any law for the time being in force.’ The excluding law is suggested to be the already cited clause in section 106, sub-section (2) of the Government of India Act, which is in the following terms.”¹

Section 106.—(1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.

Provisions as to legislation for giving effect to international agreements.
A. D. 1935.
Part V—cont.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federal State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

‘The High Courts have not and may not exercise any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.’

Section 226 of Government of India Act 1935 is analogous to section 106 cited above and runs as follows:—

Section 226.—(1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

Jurisdiction in revenue matters.

¹ Alock Ashdown & Co. Ltd. v. Chief Revenue Authority of Bombay. 1 I. T. C. 221.

(2) A Bill or amendment for making such provision as aforesaid shall not be introduced into or moved in a Chamber of the Federal or Provincial Legislature without the previous sanction of the Governor-General in his discretion or, as the case may be, of the Governor in his discretion.

In dealing with the scope of section 106 of Government of India Act 1919 aforesaid, Lord Phillimore in 1 I. T. C. 221 above referred to, remarked :—

“ In Their Lordships’ view, the order of a High Court to a Revenue Officer to do his statutory duty would not be the exercise of ‘ original jurisdiction in any matter concerning the revenue,’ and the latter part of the clause need not be considered, for the proceedings in this case had not to do with the collection of the revenue, but with the preliminary assessment to ascertain what that revenue was.”

It would appear that the powers under section 45 of Specific Relief Act can be exercised only by the High Court of Madras, Bombay, and Calcutta. In deciding the jurisdiction of Patna High Court, the said High Court.

Since the passing of the Specific Relief Act (1877) the Calcutta High Court has no power to issue the prerogative writ of mandamus, apart from the terms of section 45 of the Specific Relief Act and that, it being so, the Patna High Court, constituted long after the Specific Relief Act had been passed, could not have inherited any power to issue the said prerogative writ of mandamus. The Letters Patent of the Patna High Court (specially in view of clause 9) contain nothing to indicate that the Patna High Court was also invested with the powers of issuing prerogative writs in the same way as the Calcutta High Court had the power.¹ In another case, it was doubted whether the Patna High Court had power to make an order under section 45, in

¹ Surajmal Brij Lal v. The Commissioner of Income-tax, Behar and Orissa, 5 I. T. C. 82 ; A. I. R. 1930 Pat. 538.

the nature of mandamus, on an application under section 66 (3) directing the Commissioner of Income-tax to state a case, though no application was maintainable to the Commissioner under section 66 (2).¹ In *Krishnaballabh Sahy v. The Governor of Behar and Orissa*², it was argued that the High Court of Patna had such jurisdiction, having inherited it from Calcutta High Court, but was not decided. In *Dinanath Hemraj v. Commissioner of Income-tax, U. P.*,³ the Allahabad High Court claimed to interfere in regard to matters not arising out of orders under sections 31 and 32, but did not say explicitly wherefrom they derived their power. It may be that the Allahabad High Court thought that the jurisdiction of the civil courts is ousted under section 67 only where the assessment is made strictly in accordance with the provisions of Income-tax Act.

Under section 66 before it was amended so as to allow a reference from order passed by the Commissioner under section 33, it was held by the Madras and Calcutta High Courts, that they had power under section 45 of Specific Relief Act, to compel the Commissioner to state a case in review proceedings.⁴

Assessment under section 23 (4) and reference to High Court.—It has been shown while dealing with section 23 (4) that failure to make a return under section 22 (1) or 22 (2) or failure to comply with all the terms of a

¹ *Hrikamji Jiwandas v. The Commissioner of Income-tax, Behar and Orissa*, 1 I. T. C. 406 ; A. I. R. 1925 Pat. 352.

² 5 Pat. 595.

³ 2 I. T. C. 304.

⁴ A. I. R. 1926 Mad. 1051 S. B. ; A. I. R. 1926 Cal. 998 ; see also A. I. R. 1926 Bom. 596.

notice issued under section 22 (4) or 23 (2) renders an assessee liable to be assessed under section 23 (4), which is described as "best judgment" assessment, from which an appeal is barred by proviso to section 30 (1). The Assistant Commissioner, before proceeding to reject an appeal from an order under section 23 (4) will satisfy himself that the sub-section has been properly applied, and if he finds that it has been so applied, the appeal will be rejected as not maintainable. The assessee can then apply to the Commissioner for exercise of his powers under section 33 and show to the Commissioner that the order which is described as one under section 23 (4) should really have been described as one under section 23 (3). If the Commissioner upholds the contention of the assessee, and holds that the order of the Income-tax Officer should have been passed under section 23 (3), he can pass what orders he thinks fit. The Commissioner can even grant relief in case he holds that the order of the Income-tax Officer was rightly passed under section 23 (4) and consequently no appeal lay. It would appear that the Commissioner can under section 66 (1) refer to High Court any question of law arising from an order under section 23 (4). His powers are in no way taken away. But the assessee's right to demand a reference is limited to certain orders only. The question is, can the High Court entertain question of law arising out of an order passed under section 23 (4), even though the section may have been misapplied. Is the High Court empowered to look into the facts of the case to decide whether the exercise of the discretion in the Income-tax Department in applying section 23 (4) has been properly exercised, or that what is in fact described as an order under section 23 (4) is in effect and in substance an order under section 23 (3) and should have been described as such

It has been held that where the assessee failed to comply with the Assessing Officer's demand for account and consequently his right to appeal was barred, his application to the High Court for the issue of a mandamus to the Income-tax Commissioner to state a case was incompetent.¹

The question whether an assessment under section 23 (4) is valid or not is not a question of law that arises or can arise out of an order of the Assistant Commissioner passed under section 31, and consequently such a question cannot be made the grounds for an order by the High Court under section 66 (3) requiring the Commissioner to state a case.

Per Niamatullah J.—

Section 66 (1) empowers the Commissioner to make a reference to the High Court whenever in the course of any assessment a question of law arises before him. But the right of the assessee to insist on the Commissioner making a reference to High Court and his right to move the High Court for an order requiring the Commissioner to state a case and make a reference are limited. Under section 66 (2) the assessee can apply to the Commissioner requiring him to refer to the High Court any question of law arising out of orders under section 31 or section 32, or of a decision by a board of referees under section 33-A. No order under section 32 was passed against the assessee, nor are we concerned with any decision by a board of referees under section 33-A.

The only question is whether there was an order under section 31. That section deals with the exercise by the Assistant Commissioner of his appellate power. Section 30 prescribed the limits of the appellate powers of the Assistant Commissioner. An appeal lies to the Assistant Commissioner from an assessment under section 23 (4). Appeals also lie from an order of the Income-tax Officer to make fresh assessment under section 27, an order under section 25 (2), section 25-A or section 28. It is thus clear that the Assistant Commissioner can pass an order under section 31

¹ Banarsidas v. the Commissioner of Income-tax, Punjab, A. I. R. 1926 Lahore 400; 2 I. T. C. 170; A. I. R. 1931 Rang. 194; A. I. R. 1932 P. F. B.; A. I. R. 1931 Rang. 194; A. I. R. 1934 All. 929; A. L. R. 1932 Pat. 1 F. B.

(in appeal) in certain cases which do not include one in which an assessment under section 23 (4) has been made.

Section 30, proviso, expressly declares that there shall be no appeal from an assessment to the best of the Income-tax Officer's judgment under section 23 (4) or under that sub-section read with section 27. Accordingly no question of law or fact arising from such assessment can be the subject of consideration by the Assistant Commissioner for the simple reason that no appeal lies to him, with the result that the Assistant Commissioner can never have an occasion to pass in appeal an order under section 31 in relation to a best judgment assessment. As already shown, the High Court can require the Commissioner to make a reference for decision by the High Court of a question of law only if it arises from an order under section 31. It is argued, on the authority of *Ananda v. I. T. Commissioner*¹ that the order of the Assistant Commissioner rejecting an appeal on the ground that it did not lie, is an order under section 31 "disposing of an appeal." This is the view taken by the majority of the judges composing the Full Bench. It is said, there is no other section under which such an order *in limine* can be passed. With great respect I would point out that a tribunal cannot "dispose of an appeal" if what purports to be an appeal is no appeal and is held by the tribunal to be incompetent. Where the Assistant Commissioner rejects what purports to be an appeal on the ground that none lies, he gives effect to the proviso to section 30, and his order should be deemed to be one under it and not under section 31. In passing such an order the Assistant Commissioner refuses to entertain the appeal, and cannot be considered to be "disposing of an appeal," which implies the assumption that the appeal lay, was entertained and disposed of, after discussion of some question falling within the purview of the appeal.

In my opinion it is not open to the Assistant Commissioner to express the opinion that the Income-tax Officer should not have assessed to the best of his judgment under section 23 (4) if the latter stated in his order that a case existed for assessment to the best of his judgment. Any abuse of power by the Income-tax Officer or perversity of judgment is to be corrected by the Commissioner in revision, but the Assistant Commissioner has no jurisdiction, where he has before him what purports

¹ A. I. R. 1931 Pat. 306 F. B.

to be an appeal from an assessment under section 23 (4). It is only if he has jurisdiction to entertain the appeal that he can say whether the assessment was perverse or arbitrary. That stage cannot be reached if he is not allowed by law to entertain an appeal from it.

Whether this is a lacuna in the Act or the power of the High Court was deliberately excluded by the legislature in respect of an assessment made under section 23 (4), it is difficult to say. As the law stands, the assessee has to be content with such relief as the Commissioner may give him, in the exercise of his revisional powers under section 33, which undoubtedly confers upon him a wide discretion in dealing with questions arising in the course of assessment by officers subordinate to him. He can, in the exercise of those powers, interfere with an assessment made by the Income-tax Officer to the best of his judgment under section 23 (4). He may also decide the question whether such assessment was arbitrary and unreasonable. As a matter of fact, Mr. Muir did interfere with the first assessment. The Commissioner may also make a reference to the High Court for decision of any question of law that may arise in revision; but he cannot be ordered by the High Court to do so, nor can the assessee claim as of right that any question of law be referred to the High Court.

It is difficult to find any reason for distinction between questions of law arising from orders under section 31 and those under section 33. Prima facie there is as much reason for power being given to the High Court to require a reference to be made in respect of questions of law arising from orders under section 33 as in case of orders under section 31. The present case itself affords a striking instance of the desirability of such power being given. The Income-tax Officer, who made an assessment in the first instance, found the income to be Rs. 5,113. In making a fresh assessment to the best of his judgment his successor estimated the income to be Rs. 75,000. The 'estimate' rests on nothing but what the Income-tax Officer chose to assume as the income in Sambat 1986. The so called reasons, on which the estimate is based, if justifiable, can as well warrant the assumption that the income was much more or much less. Where the Income-tax Officer is to make an assessment to the best of his judgment it should not be an assessment by way of penalty; his judgment ought to proceed on some data, including legitimate presumptions, arising from non-production of the account books. The assessee's books for the preceding years and those for subsequent years

were available, and in making an assessment to the best of his judgment the Income-tax Officer might well have drawn inferences from receipts in those years. Such inferences together with other facts which a careful enquiry might disclose could have formed a satisfactory basis from an assessment. It should be borne in mind that an assessment under section 23 (4) should not be influenced by a desire to punish the assessee for non-compliance with a notice under section 22 or section 23, however culpable such non-compliance may be. Any deliberate concealment or mis-statement of the particulars of his income by the assessee is made punishable by section 28; and if his act amounts to an offence under that section, he should be tried and convicted if the offence is proved, in which case the law gives him a right to appeal, but to punish him indirectly by making a so-called best judgment assessment is wholly unwarranted. The question of law, which arises in such cases, has reference to the meaning of the expression "assessment to the best of his judgment," and its application to the facts of a particular case.

My examination of the relevant sections of the Income-tax Act has led me to the conclusion that the High Court cannot in this case direct the Income-tax Commissioner to make a reference to this Court for decision of the questions which the assessee desires to raise. The view that I have taken is in accord with *Abdul Bari Chowdhury v. Income-tax Commissioner Burma* (2).¹ We have been referred to *Muhammad Hayat v. Commissioner of Income-tax*² in which the High Court passed an order requiring the Income-tax Commissioner to make a reference for decision of questions of law arising from assessments under section 23 (4). No question was, however, raised, in this case as regards the power of the High Court to require the Commissioner to make a reference. It was merely assumed that the High Court had such power.

Bennet J.—

"This is an application by an assessee asking this court to call on the Commissioner of Income-tax to state a case under section 66 (3), Income-tax Act. The questions on which learned counsel presses that

¹ 1931 9 Rang. 281 F.B.

² 1931 12 Lah. 129 F.B.

a case should be stated are those numbered (1), (3), (4) and (5) in the application and are as follows:—

“(1) Whether in the absence of any evidence whatever to prove the possession of the 4 account books for the Sambat year 1986 by the petitioner, the Income-tax Officer was justified in law in holding that the petitioners had been guilty of non-production of the said books ?

“(3) Whether the Income-tax Officer being fully aware by 15th January, 1931, that the petitioners were not in possession of the aforesaid 4 account books for the Sambat year 1986 was justified in commencing proceedings under section 34 of the Act and whether his action in demanding production of the said books and then proceeding under section 23 (4) of the Act was legal and regular ?

“(4) Whether under the circumstances of the case the assessment was really made under section 23(3) of the Act and the appeal to the Assistant Commissioner of Income-tax should have been entertained and heard on the merits ?

“(5) Whether the assessment being purely arbitrary and based on no materials whatever was justified in point of law ? ”

The facts of the case have been set out in the order of the Income-tax Officer making the assessment dated 29th June, 1932. Those facts are that for the year in question 1930-31 there was first of all an assessment made and in that assessment dated 20th May, 1930, a tabular statement was quoted showing totals which were derived from the account books for the Sambat year 1986 which were produced. The Income-tax Officer does not appear to have done more than to object to seven items which the assessee desired to deduct and the Income-tax Officer refused to allow this deduction and made an assessment on the tabular statement of an income of Rs. 5,113. Subsequently a notice was issued under section 34 on the ground that income had escaped assessment, and the Income-tax Officer required that the books should be produced again. By this time the books had been lost according to the assessee and they were not produced. The Income-tax Officer therefore claimed that he had a right to make a best judgment assessment under section 23 (4) and proceeded to do so. A revision was filed to the Commissioner against that best judgment assessment, and the Commissioner set it aside by an order dated 28th November, 1931, and required the Income-tax Officer to weigh

the evidence more carefully. An assessment was made again by the Income-tax Officer on 29th June, 1932, and he again assessed the income at Rs. 75,000. It is this assessment order which is now called in question. The actual assessment portion of the order occupied two typed pages, and the Income-tax Officer has given certain reasons for coming to the conclusion that the income was Rs. 75,000. The assessee claims that those reasons are arbitrary and that the assessment is based on no materials, and therefore is not a valid assessment in law. The assessee made an application under section 27 for cancellation of the best judgment assessment on the grounds that he was prevented by sufficient cause from producing the books, and that application was rejected. The assessee then filed an appeal before the Assistant Commissioner of Income-tax both against the order rejecting the application under section 27 of the Income-tax Act and against the best judgment assessment under section 23 (4), and he claimed that it should be treated as an assessment under section 23 (3). On 1st September, 1932, the Assistant Commissioner held that there was no sufficient reason to interfere with the order under section 27 and he dismissed the appeal under that head. In regard to the appeal against the assessment under section 23 (4) he held that no appeal lay and that he was unable to entertain such an appeal. An application was then made to the Commissioner to state a case which he refused to do. In this connection the Commissioner referred to the ruling reported in *Abdul Bari Choudhury v. Commissioner of Income-tax, Burma*, that the assessee had no right of application or reference to the High Court in the case of a best judgment assessment under section 23 (4).

The first question which has arisen for decision in this appeal is whether the order which the assessee desires can be made by this court. The powers of this Court to require the Commissioner to state a case are given in section 65 (3) which begins:—

“if, on any application being made under sub-section (2), the Commissioner refuses to state a case etc.”

This shows that the power of requisition of this Court is limited in the same manner that an application under sub-section (2) is limited. Sub-section (2) states :

“ Within one month of the passing of an order under section 31 or section 32, the assessee in respect of whom the order was passed may..... require the Commissioner to refer to the High Court any question of law arising out of such order.”

A requisition therefore must be in regard to any question of law arising out of an order under section 31 or section 32. Section 31 deals with the hearing of an appeal by an Assistant Commissioner, and section 32 deals with the hearing of an appeal by the Commissioner against an order passed by an Assistant Commissioner under section 28, or an order enhancing an assessment under section 31 (3). Section 28 deals with an order directing a penalty for concealment of income. We are not concerned here with any order under section 32. Learned counsel for the assessee argues that the order of the Assistant Commissioner is an order under section 31 and that therefore a requisition can be made by this Court. On the other hand it is contended by learned Counsel for the Income-tax Commissioner that the order is not one under section 31 and that therefore there can be no requisition by this Court. There were in fact two appeals before the Assistant Commissioner, Nos. 25 and 26. One of these appeals was against the order of the Income-tax Officer rejecting the application under section 27, Income tax Act, and the other appeal was against the assessment under section 23 (4). The Assistant Commissioner disposed of these two appeals by one order dated 1st September, 1932, noting on the other appeal that it was governed by this order. In regard to the appeal against the order under section 27 he held that there was no sufficient reason to interfere with that order. He found that the assessee had been in possession of the books and that they had purposely withheld them and their story that the books had been lost was untrue. Now the first question which the assessee desire to be treated as a question of law is in regard to this finding of fact and is as follows:—

“Whether in the absence of any evidence whatever to prove the possession of the 4 account books for the Sambat year 1986 by the petitioner, the Income-tax Officer was justified in law in holding that the petitioners had been guilty of non-production of the said books?”

The assumption underlying this question is that it was necessary for the finding that there should be some oral evidence to the effect that the books were still in the possession of the assessee. This is a very common delusion and is constantly brought forward in argument. The theory is contrary to the provisions of section 103 of the Indian Evidence Act, which is as follows:—

“The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided

by any law that the proof of that fact shall lie on any particular person."

In the present case it was admitted that these books had existed and had been produced before the Income-tax Officer in the original assessment dated 20th May, 1930. The assessee desired the Court to believe that these books had been lost subsequently. The burden of proof of that fact lay on him. It was for the Income-tax Officer and the Assistant Commissioner to decide whether he had discharged that burden or not. They considered that the evidence which he produced was not sufficient to prove his allegation. No question of law arises from their decision on this point.

The question No. 3 which I have quoted does not appear to embrace any point of law which could arise and it appears to be merely an argument against the action of the Income-tax Officer based on the idea that because the assessee had made the allegation in regard to the loss of his books, which was subsequently held to be untrue, therefore the Income-tax Officer ought not to have taken proceedings under sections 34 and 23 (4) of the Act. No question of law can arise out of such an argument.

The remaining questions Nos. 4 and 5 raise the point in regard to the assessment under section 23 (4) and therefore this involves the point as to whether the order of the Assistant Commissioner in respect to this matter was or was not made under section 31. The Assistant Commissioner held in regard to the appeal No. 25.

"I hold that the assessment is one under section 23 (4) and I decline to admit the appeal;"

and further he held:

"I hold that the assessment was properly made under section 23 (4) by the Income-tax Officer against which no appeal lies. I am therefore unable to entertain the other appeal also which is against the assessment."

Clearly therefore the Assistant Commissioner refused to entertain this appeal under section 31 on the ground that no appeal lay. This is in accordance with the proviso in section 30 (1) which is as follows:—

"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."

In spite of this clear provision in the Act learned Counsel for the assessee has argued at length that an appeal does lie against an assessment under section 23 (4). I cannot imagine that any clearer provision could be made in the Act to show that no appeal shall lie in respect of an assessment under section 23 (4). The intention of the Act clearly is that in the case of an assessment under section 23 (4) there shall be no appeal, but the remedy of the assessee is limited to an application to the Commissioner to make a revision under section 33. In the present case the assessee did go once in revision to the Commissioner and the Commissioner set the assessment aside by his order of 28th November, 1931. But instead of applying again in revision to the Commissioner against the new assessment of 29th June, 1932, the assessee has adopted the wrong remedy and has attempted to proceed by way of appeal to the Assistant Commissioner and by way of requiring the Commissioner to state a case and by way of requiring this Court to direct the Commissioner to state a case, it is not apparent why the assessee should have adopted this wrong method of procedure in view of clear provisions of the Act.¹

The case of Maharaja Dhiraj of Darbhanga v. Commissioner of Income-tax,² was a case on a reference by the Commissioner and is no authority for the proposition that the assessee can pray the High Court to require the Commissioner to state a case to the High Court on acquisition of law arising out of a case under section 23 (4). Similar remarks apply to the case of Muhammad Hayat v. Commissioner of Income-tax, Punjab.³

In Ananda v. Commissioner of Income-tax, the Court had ordered the Commissioner to state a case on two points in regard to an assessee who claimed that he had no income arising in British India, and who had been assessed under section 23 (4), and whose petition under section 27 had been rejected. The Assistant Commissioner held that the

¹ Messrs. Joti Ram Sher Singh Shamli, *In re* 1934 I. T. L. J. page 34; 7 I. T. C. 173; A. I. R. 1934 All. 559; 1934 A. L. J. 274.

² 9 Pat. 240 F. B.

³ 12 Lahore 129 F. B.

assessment was rightly made under section 23 (4) and the petition rightly rejected under section 27, and he then went on to discuss the merits of the case and held that there was income assessable in British India. Application was made in revision under section 33 to the Commissioner and he was also asked to state a case under section 66 (2). He held that no case should be stated under section 66 (2) as the assessment was under section 23 (4) and that the Assistant Commissioner should have dealt with this latter point only and should have rejected the appeal *in limine*. The case was ordered to be stated on the two points

“(1) Whether a person who has been assessed under section 23 (4) is entitled to prefer an appeal to the Assistant Commissioner on the ground that he was not liable to be assessed under the said Act, or whether the proviso to section 30, cl. (1), is a bar to the appeal; and

(2) Whether on the facts of the present case the assessee is liable to be assessed under the Act.”

The Full Bench found unanimously against the assessee on both these points.¹

It has been held by the Allahabad High Court in the case cited above that an order of the Assistant Commissioner ‘rejecting an appeal on the ground that no appeal lies from an order of the Income-tax Officer passed under section 23 (4),’ is not an order disposing of an appeal under section 31. The argument that there is a general duty of the court to stand between the subject and the Crown was negatived by Mr. Bennet J. who observed :—

“In England there is such a general duty, because the English Courts inherit the jurisdiction of the Court of the Exchequer, which had

¹ A. I. R. 1931 Pat. 306 F. B.

this special jurisdiction. But there is no such jurisdiction granted to the High Courts in India by their Letters Patent; nor by any Act, as in general these Acts dealing with land Revenue etc. provide that such taxation shall be excluded from the jurisdiction of the High Courts, and there are special Revenue Courts in India for the exercise of such jurisdiction. In regard to this very matter of income-tax, so far from the High Court having any general jurisdiction 'to stand between the subject and the Crown' the jurisdiction of the High Court is limited to the decision of points of law on a reference arising under certain conditions."

Relying on the decision in 1934 I T. L. J. page 34 above referred to it was held in another case by the Allahabad High Court, that the High Court has no power to order a reference being made to it where no appeal lies to the Assistant Commissioner. Consequently, where the Income-tax Officer makes an assessment to the best of his judgment under section 23 (4), an appeal from such assessment being barred by the proviso to section 30 (1), the High Court cannot direct a reference being made under section 66 (3).

The High Court in this case went so far as to hold that the High Court in such a case cannot interfere even though the assessment made by the Income-tax Officer is perverse.¹ The Nagpore Chief Court has held similar view.²

The Sind Chief Court has held that whether the Assistant Commissioner has jurisdiction or not, if he does in fact hear the appeal and pass an appellate order dismissing the appeal the order is one under section 31 and the assessee can pray for a reference to the High Court.³

¹ *In re Bhagwati Prasad*, 1934 I. T. L. J. page 56.

² A. I. R. 1927 Nag. 283.

³ A. I. R. 1934 Sind 401.

Where no return is filed an application for reference is not maintainable against an assessment under section 23.¹

The following instructions may be cited.

Reference to High Court.—Under the Act of 1918 a reference to the High Court on a question of law might be made only if the head of the Income-tax Department in a province saw fit. He was not required to make any such reference on the application of an assessee if satisfied that the application was frivolous or that a reference was unnecessary. Under section 66 of the Act, the Commissioner of Income-tax has no longer power to withhold a reference on these grounds but is required to state a case to the High Court on the application of an assessee. In order to provide against frivolous or unnecessary applications, sub-section (2) requires that every such application shall be accompanied by a fee of Rs. 100 or such lesser sum as may be prescribed by rule made by the Central Board of Revenue (no lesser sum has yet been prescribed). In order to safeguard the revenue, sub-section (7) provides that the fact that a case has been stated to the High Court shall in no way stop the collection of the tax from the assessee.

(ii) An application for a reference to the High Court can only be made after an appeal to the Assistant Commissioner under section 31 or an appeal under section 32 to the Commissioner or a reference to a Board of Referees under section 33-A has been disposed of. An assessee must therefore exhaust his remedies of appeal to the income-tax authorities before requiring a reference to the High Court. As it is desirable that questions of principle should, so far as possible, be settled by the revenue authorities, the proviso to sub-section (2) provides that if on receipt of such an application the Commissioner is himself prepared to give a ruling in favour of the assessee on the point of law raised, the applicant may withdraw his application for a reference to the High Court in which event the fee paid shall be refunded.

(iii) An assessee may also ask for a reference to the High Court on a question of law arising out of an order of the Commissioner of Income-tax under section 33 of the Act. This right has been newly conferred on the assessee by the Indian Income-tax (Second Amendment)

¹ A. I. R. 1930 Lahore 1014.

Act, 1932. A reference in respect of such an order can be asked for only where the order enhances an assessment or otherwise prejudices the assessee and in no other case. Further a reference can be made only on a point of law arising out of the order under section 33 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.

(iv) The circumstances under which the fee may be refunded to the assessee are specified in the second proviso to section 66 (2). A refund may be made (1) when the question which the assessee desired should be referred to the High Court has been decided by the Commissioner in exercise of his powers under section 33 in favour of the assessee and the latter withdraws his application, and (2) when the Commissioner rejects the application on the ground that it is time barred or otherwise incompetent or when he refuses to state the case in exercise of his powers under sub-section (3) of section 66 and the assessee withdraws his application.

(v) In all cases the assessee should withdraw his application within thirty days from the date on which he receives notice of the order passed by the Commissioner. The refund of fee except in the circumstances specified above is not warranted by the Act.

(vi) No reference may be made to the High Court on a question of fact. The Commissioner, under these provisions, may, therefore, only withhold an application for a reference to the High Court if he considers that a point of law is not involved. If he does withhold it on that ground, the applicant under sub-section (3) may apply to the High Court within six months from the date on which he is served with notice of the refusal to make a reference for a mandamus requiring the Commissioner to state a case, and if the High Court issues such a requisition, the Commissioner must state a case. The rights of an assessee in cases where the Commissioner refuses to state a case on the ground that the application under section 66 (2) was time barred, are set forth in sub-section (3A) and (7A) of section 66.

(vii) Where an Assistant Commissioner, hearing an appeal against an order purporting to have been made under sub-section (4) of section 23, dismisses the appeal on the ground that the assessment was rightly made under that sub-section and that therefore no appeal lies, the order dismissing the appeal is an order under section 31 within the meaning of sub-section

(2) of section 66 and the assessee is therefore entitled to require the Commissioner to refer to the High Court any question of law arising out of such order.

(viii) The Commissioner retains the power to state a case to the High Court on his own motion or on a reference from any income-tax authority subordinate to him. No authority other than the Commissioner is authorised to state a case for the High Court.

(ix) The application for a reference must be made by the assessee within sixty days of the date on which he is served with notice of an order by an Assistant Commissioner under section 31, or by a Commissioner under section 32, or of a decision by a Board of Referees under sections 33-A and the reference to the High Court must be made by the Commissioner within sixty days of the receipt of the application.¹

It would appear that para 139 (vii) does not lay down the correct law in view of the rulings cited above in so far as it says that an order in appeal from an assessment under section 23 (4), rejecting the appeal on the ground that no appeal lies, is an order under section 31.

66-A. (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

P. 139, 140.
Reference to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

¹ Income-tax Manual, para. 139.

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.

"Under section 66-A an appeal lies to the Privy Council from any judgment of the High Court delivered in a reference under section 66 if the High Court certifies that the case is a fit one for appeal."¹

Section 98, C. P., runs as follows :—

98 (S. 575) (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

Decision where appeal heard by two or more Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the Letters Patent of any High Court.

The following provisions of C. P. C. relating to appeals to His Majesty in Council may be cited.

109. Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council—

When appeals lie to King in Council.

- (a) from any decree or final order passed on appeal by a High Court or by any other court of final appellate jurisdiction ;
- (b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction ; and
- (c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

¹ I. T. Manual, para 139 (x).

Appeal to Privy Council.—Under section 66-A, an appeal to Privy Council in sub-section (2) is confined to cases which the High Court certifies “to be a fit one for appeal to His Majesty in Council” and that cases falling within the requirements of section 110 C. P. Code are excluded.

The words “so far as may be” in sub-section (3) of section 66-A, are apt to confine the statutory right to appeal to cases described in sub-section (2).

Section 66-A (2) not being retrospective, cannot be invoked in respect of orders made prior to the enactment.¹

Where the assessee's petition to the High Court, praying that the Income-tax Commissioner be directed to state a case, was rejected by the High Court, and the subject matter involved exceeded Rs. 10,000: it was held, that no appeal lay to the Privy Council in such a case as of right, that no right of appeal to Privy Council exists in cases set out in section 66-A, that there was no right of appeal given by the Letters Patent² and that no relief could in such cases be given under section 45 Specific Relief Act, as there was a remedy provided in section 66 (3). It was further held, that the nature of the jurisdiction of the High Court in dealing with reference under section 66 was not original, but was one derived from the Indian Income-tax Act.³

Where the assessee's application to the High Court under section 66 (3), praying that the Commissioner of Income-tax may be ordered to state a case, was dismissed on the

¹ The Delhi Cloth and General Mills Co. Ltd. v. The Commissioner of Income-tax, Delhi, 2 I. T. C. 439 P. C. ; 25 A. L. J. 964.

² Mad. Cl. 39.

³ O. V. R. S. V. Arunachalam Chettier v. The Commissioner of Income-tax, Madras, 6 I. T. C. 472.

ground that no question of law arose in the case which the Commissioner could have referred or which the High Court could require him to refer, it was held that no appeal lay to Privy Council from such an order of the High Court in view of section 66-A, or under clause 37 of the Letters Patent (Rangoon). The object and effect of sections 66 and 66-A was to provide a special machinery whereby the assessee or the Commissioner of Income-tax could obtain the High Court's opinion upon any question of law arising in the course of an assessment, and that the jurisdiction with which the High Court was invested under the Act was of an exceptional nature, and that the effect of the two sections, 66 and 66-A, was that no appeal lay from an order of the High Court under section 66 (3) except as provided in section 66-A.¹

Where the decision of the High Court, on a reference under section 66 (3), raised no question of general importance and no principle of general application was involved, no appeal lay to Privy Council and consequently a certificate for the same could not be granted in such case.²

The Lahore High Court has held that an order refusing to issue a mandamus to the Commissioner to state a case, where the subject matter involved is Rs. 10,000 or more in value, gives the assessee-appellant a right to a certificate for leave to appeal to Privy Council, as the order must be passed on the original side and is a judgment, and that the applicant is entitled to a certificate of right in such a case, in view of Cl. 29 (Lahore) Letters Patent.³

¹ E. M. Chettyar Firm v. The Commissioner of Income tax, Burma, 5 I. T. C. 18; A. I. R. 1930 Rang. 274.

² Nathu Mal v. The Commissioner of Income-tax, Punjab, 5 I.T.C. 23; A. I. R. 1930 Lahore 109.

³ Feroze Shab Kaka Khel v. The Commissioner of Income-tax, Punjab, 5 I.T.C. 198; A.I.R. 1931 Lahore 138 (Cf. cases to the contrary cited above.)

It has been held that in cases, which come within the purview of the law and are in the letter of the law, such as permit the questions of law being examined by the Privy Council, leave to appeal to Privy Council should be granted, however strong the High Court may feel the correctness of the reasons given by it on the point in issue, for it is possible that Their Lordships of the Privy Council may come to a different conclusion.¹ In another case the Punjab High Court refused leave to appeal to Privy Council, to the Commissioner where certain points of law decided in favour of the assessee were quite plain and others had been decided in view of certain Privy Council decisions.²

Where, however, the Commissioner challenges the jurisdiction of the High Court to have compelled him to refer certain questions of law for opinion under section 66 (3), leave should be granted to him to appeal to Privy Council.³ But an order passed by the High Court declining to call upon the Commissioner to state a case and refer it, is not a judgment "on a reference" within the meaning of section 66-A (2), and leave to appeal to Privy Council from such order of refusal cannot be granted.⁴

A case may be certified as a fit one for appeal to Privy Council on the ground that it involves a question of

¹ Commissioner of Income-tax, *Bombay v. Bulchand Keshavdas*, 7 I. T. L. J. page 408.

² Commissioner of Income-tax, *Punjab v. Kishan Kishore*, 7 I. T. L. J. page 189.

³ Commissioner of Income-tax, *Bombay v. Bulchand Keshavdas*, 1934 I. T. L. J. page 60.

⁴ *Gurmukhrai v. Secretary of State for India and Council*, 1934 I. T. L. J. page 113.

general importance, but no appeal to Privy Council can be entertained under this section unless the case is certified by the High Court to be a fit one for an appeal to His Majesty in Council.¹

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 proceedings shall lie against any Government Officer for anything in good faith done or intended to be done under this Act.

Bar of suits in Civil Court.

Section 67 bars a suit to set aside or modify an assessment under the Income-tax Act, and protects the Government officers for acts done or intended to be done in good faith under the Act. It would appear that where an act done is *ultra vires* of the Income-tax Act, a civil suit is not barred.² Thus it has been held that a suit in which the relief claimed is merely declaration that the registration of the instrument of partnership was *ultra vires* and void, is not a suit to modify an assessment made under the Act and such a suit is not barred.³ An assessee was assessed for want of a return of income having been submitted by him. He stated he was not the person mentioned and refused to pay as the shop stood in his wife's name. The Income-tax Officer proceeded to levy the amount assessed with penalty. Assessee filed a suit against the Secretary of State to recover this money with interest. It was held, that section 67 barred the suit

¹ Commissioner of Income-tax, U. P. v. Maharaja Kumar of Vijianagaram, 1935 I. T. L. J. page 59.

² See Dinanath Hansraj v. The Commissioner of Income-tax, U. P., 2 I. T. C. 304.

³ C. T. A. C. P. Nachiappa Chettyar v. Secretary of State and another, 7 I. T. L. J. page 339.

as the Income-tax Act provided the person assessed with a remedy under the Act itself by way of appeal to Assistant Commissioner and Commissioner and by asking for a reference to High Court. It was held, further, that section 67 was not *ultra vires* of the Legislature.¹

67-A. 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.

P. 140.

Computation of periods of limitations.

Computation of periods of limitation.—In computing the period of limitation prescribed for an appeal under section 30 or 32 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. The application or appeal must however be filed not later than the last day of the period of 30 or 60 days, as the case may be, so computed.

Under section 21, the return must be filed on or before the 30th April. Under section 22 (2), if notice is received on May 1st, and the time specified in the notice is thirty days, the return must be made at least on May 31st. Cases under section 66 (3) are for the High Court to deal with.²

68. [Repealed.]

¹ Dr. R. N. Singha v. Secretary of State for India and Council, A. I. R. 1928 Rang. 70 ; 2 I. T. C. 462.

² I. T. Manual, para. 140.

APPENDIX I

LIABILITY OF INSTRUMENTS PRESENTED TO OR ISSUED BY INCOME-TAX AUTHORITIES TO STAMP-DUTY AND COURT-FEES.

Affidavits.—(i) Exemption (b) to Article 4, Schedule I, Indian Stamp Act, 1899, does not apply to an affidavit required for the immediate purpose of being filed or used in any Income-tax proceedings or before the Income-tax Officer or the Assistant Commissioner or the Commissioner, because none of these officers is a 'Court.'

Copies or extracts.—(ii) Under Article 24, Schedule I, *ibid*, all copies or extracts certified to be true copies or extracts by officers in the Income-tax Department are liable to stamp duty if under the law they are not chargeable with Court-fees.

Powers of Attorney (Authorisation Letters).—(iii) A bare letter of authorisation, i.e., written statement by an assessee that a certain person appears on his behalf, does not require to be stamped as a "power of attorney". A "power of attorney" is a document which renders it safe for a third person to treat the agent as though he were the principal. Whether a document that is more than a bare letter of authorisation, does, in fact, entitle the agent to bind the principal is a matter of fact that can only be decided with reference to the facts of each case. If it is "a power of attorney" it is liable to stamp duty. The power of attorney should be stamped as an authority to act in a single transaction (Article 48 (c) of Schedule I). There is, however, nothing to prevent an Income-tax Officer granting permission to a representative to appear without acting on behalf of an assessee, i.e., merely to produce or explain accounts, etc.

Orders—Copies of.—(iv) Under Schedule I, Article 6, of the Court-fees Act, 1870, every copy of an order passed by an officer in the Income-tax Department in respect of any proceedings under the Act is chargeable with Court-fees.

(v) Under Article 9 of the same schedule, every copy of an Income-tax proceeding or order (not otherwise provided for by the Court-fees

Act) or copy of any account, statement, report or the like taken out of an office in the Income-tax Department is liable to Court-fees.

(vi) Article 6 of Schedule I of the Court-fees Act applies to quasi-judicial orders, e.g., assessment orders including orders enhancing assessments, orders under section 27, orders imposing penalties under section 25 (2) and section 28 (1) and all appellate and revisional orders generally; and Article 9 to other orders.

(vii) Under paragraph 99, a copy of the assessment order passed under section 23 is supplied free of copying charges by the Income-tax Officer on an application by an assessee subject to certain conditions. Such a copy is also free of court-fee under item 9 of Government of India Notification No. 4650, dated 10th September 1889, if for the assessee's private use. But if a copy of the assessment order is filed as an exhibit in support of an appeal, etc., it must be stamped with the proper court-fee stamp. The position is the same in respect of copies of appellate orders under section 31.

Petitions—Applications.—(viii) Under Article 1 of Schedule II of the Court-fees Act, 1870, every application or petition presented to "any executive officer" (which includes any officer in the Income-tax Department) for the purpose of obtaining a copy or translation of any order passed by such officer or any other document on record in such office is chargeable with Court-fees.

(ix) Under Article 1 (c) of the same Schedule an application or petition presented to the Central Board of Revenue is chargeable with Court-fee.

Wakalatnama.—(x) Under Article 10 (a) and (c) of the same Schedule, a Mukhtarnama or Wakalatnama presented for the conduct of any one case to an officer in the Income-tax Department of the Central Board of Revenue is chargeable with Court-fee.

Appeal—Memorandum of.—(xi) An appeal preferred under section 30 of the Indian Income-tax Act, 1922, is liable to court fee under Article 11 (a) of Schedule II of the Court Fees Act. (N.B.—No court fee is chargeable on petitions presented under section 33.)

Refunds.—(xii) Applications for refunds under section 48 of the Indian Income-tax Act are exempt from payment of Court-fees, under clause (xx) of section 19 of the Court Fees Act.

Court-fees—Computation of.—(xiii) In all those cases where the Court-fee is *ad valorem* the monetary value for the purpose of determining the Court-fee is the amount of tax or penalty levied by the Income-tax Officer.

Rates of duties.—(xiv) Stamp duties and Court-fees vary from Province to Province. As regards the details of the rates, reference should be made to the various Stamps and Court-fees Amendment Acts in the different Provinces which have been passed in recent years.*

* I. T. Manual, para 142.

APPENDIX II

INCOME-TAX ACT No. VII OF 1918.

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO INCOME-TAX.

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

Short title, extent and commencement. 1. (1) This Act may be called The Indian Income-tax Act 1918.

(2) It extends to the whole of British India, including the Sonthal Parganas, and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor-General in Council in that behalf, and to all other servants of His Majesty in those dominions ; and

(3) It shall come into force on the 1st day of April, 1918.

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 or subject to a local rate assessed and collected by officers of Government as such ;

(b) Any income derived from—

(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 of a cultivator or receiver of rent-in-kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce, or

- (iv) any building owned and occupied by the receiver of the rent or revenue of any such land as is referred to in clause (a), 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) 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, and includes a firm and a Hindu undivided family ;

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

(4) " Chief Revenue authority " means the Board of Revenue or the Financial Commissioner in Provinces where those authorities exist, and in any other case such authority as the Local Government may declare to be the Chief Revenue authority for the purposes of this Act ;

(5) " Collector " includes any officer whom the Local Government may appoint to exercise or perform all or any of the powers or duties conferred by this Act on a Collector and means in relation to any assessee carrying on business, the Collector of the place where the principal place of business of such assessee is situate, and in relation to any other assessee the Collector of the place where such assessee resides ;

(6) " Commissioner " includes any officer whom the Local Government may appoint to exercise or perform all or any of the powers or duties conferred by this Act on a Commissioner ;

(7) " 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 Governor General in Council may, by general or special order, declare to be a company for the purposes of this Act ;

(8) "Local authority" includes any person legally entitled to the control or management of any principal or local fund ;

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

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

(11) "Previous year" means 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 within the said twelve months in respect of 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 on which his accounts have so been made up :

Provided that, if the 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 except with the consent of the Collector and upon such conditions as he may think fit ;

(12) "Principal Officer" used with reference to a local authority or a company or any other public body or association not being a local authority, or company 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 Collector has served a notice of his intention of treating him as the principal officer thereof ; and

(12-A) "Registered firm" means a firm constituted under an instrument of partnership specifying the individual shares of the partners of which the prescribed particulars have been registered with the Collector in the prescribed manner ;

(13) "Total income" means total income from all sources to which this Act applies,

CHAPTER I

TAXABLE INCOME

3. (1) Save as hereinafter provided, this Act shall apply to all income from whatever source it is derived, if it accrues or arises or is received in British India, or is, under the provisions of this Act, deemed to accrue or arise or to be received in British India.

Application of
Act.

(2) 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, or any Provident Insurance Society to which the Provident Insurance Societies Act, 1912, is, or, but for an exemption under that Act, would be, applicable.
- (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 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) Legacies.
- (viii) 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 employee.

(ix) Any perquisite or benefit which is neither money nor reasonably capable of being converted into money.

¹ (x) Agricultural income.

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

4. * * * * *

5. Save as otherwise provided by this Act, the following classes of income shall be chargeable to income-tax in the manner hereinafter appearing, namely—

(i) Salaries.

(ii) Interest on securities.

(iii) Income derived from house property.

(iv) Income derived from business

(v) Professional earnings.

(vi) Income derived from other sources.

6. (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 the 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 Government, a local authority, a company, or any other public body or association not being a local authority or company, or by or on behalf of any private employer where such employer has entered into an agreement with the Collector in accordance with the prescribed conditions to recover the tax on behalf of Government, provided that the tax shall not be payable in respect of—

1. (i) * * * (Repealed by S. 6 and Sch. of Act XVII of 1920.)

(ii) Any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for the wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

¹ This clause was inserted by section 3 of Act XVII of 1920.

² Repealed by section 6 and schedule of *ibid.*

(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 Government or by a Local authority established by the Governor-General in Council.

7. 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 Government of India, or on debentures or other securities for money issued by or on behalf of a local authority or a company.

Interest on securities.
 Provided that no tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free.

8. The tax shall be payable by an assessee under the head Income derived from house property in respect of the bona-fide annual value of any (residential) (this word was inserted by S. 2 of *ibid*) house property of which he is the owner, subject to the following allowances, namely—

- (i) where the property is in the occupation of the owners, or where it is let to 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 charge or to a ground rent, the amount of any interest on such mortgage or charge or of any such ground rent ;
- (v) any sums paid on account of land revenue in respect of the property ;
- (vi) in respect of collection charges, a sum not exceeding a prescribed maximum;
- (vii) in respect of vacancies, such sum as the Collector may determine having regard to the circumstances of the case.

For the purposes of this section (***) 2 (These words and figures were omitted by S. 2 of Act XLIV of 1920) 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) (These words were substituted by Act XLIV of 1920) is in the occupation of the owner, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent. of the aggregate income of the owner.

9. (1) The tax shall be payable by an assessee under the head Income derived "Income derived from business" in respect of the from business. profits of any business carried on by him.

(2) Such profits shall be computed after making the following allowances, in respect of sum paid or, in the case of depreciation, debited, namely—

- (i) any rent paid for the premises in which business is carried on, (* * * *) (These words were omitted by S. 3 of *ibid*) provided that when any substantial part of the premises is issued as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Collector 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 actually expended thereon, 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;
- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery or plant, used for the purposes of the business, the amount of any premium paid;
- (v) in respect of current repairs (such) (this word was inserted by S. 3 of *ibid*) buildings, machinery or plant, the amount actually expended thereon ;

- (vi) in respect of depreciation of such buildings, machinery or plant being the property of the assessee, a sum not exceeding a percentage on the original cost thereof to the assessee to be fixed, subject to the approval of the Governor-General in Council, by the Local Government for different classes of buildings, machinery or plant having regard to the estimated life thereof, in determining which it shall be assumed that current repairs are executed from time to time :

Provided that—

- (a) no such allowance shall be made unless the amount claimed has actually been debited in the ordinary accounts of the business for the previous year, and the prescribed particulars have been duly furnished;
- (b) when in any year the full allowance admissible has not been claimed, the balance may be added to the allowance made for the following year or years;
- (c) the aggregate of the allowance made under this sub-head either under this Act or any Act repealed thereby shall, in no case, exceed the original cost to the assessee of the buildings, machinery or plant, as the case may be;
- (vii) in respect of any machinery or plant which has been sold or discarded as obsolete, 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), and the amount for which the machinery or plant is actually sold, its scrap value;
- (viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of the (such part of the premises as is used for the purposes of the business) (These words were substituted by S. 3 of Act XLIV of 1920);
- (ix) in respect of any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits.

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

(2) Such profits shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation provided that no allowance shall be made on account of any personal expenses of the assessee.

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

11. (1) The tax shall be payable by an assessee under the head
Income derived from other sources. "Income derived from other sources" in respect of income and profits of every kind and from every source to which this Act applies (if not included under any of the preceding heads).
(* * * *) (Repealed by S. 6 and Sch. of Act XVII of 1920.)

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

12. (1) In computing the amount of the income chargeable to income-tax in the case of an assessee under any of the foregoing heads, no account shall be taken of any income of a general nature which the assessee enjoys as a member of a company or of a firm of an undivided Hindu Family where the company, the firm or the family is liable to the tax.

(2) There shall also be excluded from the computation any sum paid by the assessee 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 of his own life or on the life of his wife or as a contribution to any provident fund to which the Provident Fund Act, 1897, applies, or to any provident fund which complies with the provisions of the Provident Insurance Societies Act, 1912, or has been exempted from the provisions of that Act :

Provided that the aggregate of any sums so excluded shall not, after taking into account any exemptions allowed in respect of like provision under the head "Salaries," exceed one-sixth of the income of the assessee which would, apart from such exclusion and exemptions, be chargeable to income-tax.

13. In computing the total income of an assessee for the purposes of Schedule I, (* *) (Repealed by S. 6 and Sch. of Act XVII of 1920) deductions exempted under the proviso to section 6 (1), income mentioned in sections 12 (1), and sums excluded under section 12 (2) shall be taken into account.

14. (1) The aggregate amount of an assessee's income chargeable under each of the heads mentioned in sections 6 to 11 shall be the taxable income of the assessee.

(2) Subject to the conditions hereinbefore set out, there shall be levied in respect of the year beginning with the first day of April, 1918, and in respect of each subsequent year, by collection in that year and subsequent adjustment as hereinafter provided income-tax upon every assessee in respect of his taxable income in that year at the rate specified in Sch. I :

(Provided that, where the assessee is a company or a registered firm and the taxable income of such company or firm is two thousand rupees or upwards, income-tax shall be levied at the maximum rate specified in Schedule I) (Substituted by S. 5 of *ibid.*)

14-A. (1) Where owing to the fact that the total income of any person has reached or exceeded a certain limit, he is liable 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.

(2) The income-tax payable by any person shall in no case exceed the amount by which his taxable income is greater than two thousand rupees) (Inserted by section 5 of *ibid.*)

CHAPTER II.

DEDUCTIONS AND ASSESSMENT.

15. (1) Income-tax shall, unless otherwise prescribed in the case of
Payment. any security of the Government of India, be deducted at
the time of payment in respect of income chargeable
under the following heads:

(i) "Salaries"; and

(ii) "Interest on securities."

(2) An employer or other person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the rate specified in Schedule I in respect of such amount, provided that, if the payment is a recurring one and in respect of any period less than a year, the rate shall be determined with reference to the amount which would be proportionately payable in a year. The deduction so made shall be treated as a payment of income-tax on behalf of the person from whose earnings the deduction was made, and credit shall be given to him therefore in the next adjustment under section 19.

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, at the time of payment, deduct income-tax on the amount of the interest payable at the maximum rate specified in Schedule I. The deduction so made shall be treated as payment of income-tax on behalf of the owner of the security, and credit shall be given to him therefor in the next adjustment under section 19.

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

(4) All sums deducted in accordance with the provisions of sub-section (2) or (3) shall be paid within the prescribed time by the person making the deduction to the credit of the Government of India, or as the Governor-General in Council directs.

(5) If any such person does not deduct and pay the tax as required by this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(6) The power to deduct under this section shall be without prejudice to any other mode of recovery.

(7) In the case of income chargeable under any other head than those above-mentioned the tax shall be payable by the assessee direct, and shall be the amount assessed under this Act subject to such adjustment as aforesaid.

16. The prescribed person in the case of every Government office, and the principal officer of every local authority, and of every company, and of every other public body or association not being a local authority or company, and every private employer who has agreed to recover income-tax on behalf of Government shall prepare, and within fifteen days from the 31st day of March in each year, deliver or cause to be delivered to the Collector, in the prescribed form, a return in writing showing—

Annual return.

- (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 not being less than six hundred rupees per annum ;
- (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 each such person.

17. (1) The principal officer of every company shall prepare, and on or before the fifteenth day of June in each year, deliver or cause to be delivered to the Collector a return in the prescribed form and verified in the prescribed manner of the total income of the company during the previous year :

Return by assessee. Provided that the Collector 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 taxable income is, in the Collector's opinion, not less than two thousand rupees, the Collector shall serve a notice upon him requiring him to furnish, within

such period 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) * * * (Repealed by S. 6 of Act IV of 1919.)

18. (1) If the Collector is satisfied that a return made under section 17 is correct and complete, he shall assess the sum payable by the assessee for the year in which the return is made on the basis of such return.

(2) If the Collector has reason to believe that a return made under section 17 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him, on a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced for the inspection of the Collector, such accounts and documents as the Collector may require and any evidence on which the assessee may rely in support of the return.

(3) On the day specified in the notice or as soon afterwards as may be, the Collector, after examining such accounts and documents, and hearing any evidence which the assessee may produce and such other evidence as the Collector may require, shall, by any order in writing, determine the total income of the assessee for the previous year, and assess the sum payable by the assessee for the year in which the return is made on the basis of such determination.

(4) If the principal officer of any company or any other person fails to make a return under section 17 (1) or (2) (Substituted by S. 3 of Act IV of 1919) as the case may be, or having made a return, fail to attend or fails to comply substantially with all the terms of a notice issued under section 18, sub-section (2), the Collector shall make the assessment to the best of his judgment.

(5) The sum to be assessed in every case shall be a sum calculated on the aggregate of the assessee's income in the previous year chargeable under each of the heads mentioned in sections 8 to 11 at the rate applicable to the total income in that year.

19. When the Collector has, in any year after the commencement of the Act for which income-tax is leviable under section 14 (2), ascertained, either from the return made by an assessee or after further inquiry, the total income actually received by or accrued to the assessee in the previous year, he shall compute the income-tax which would have been payable in respect thereof if it had been levied in such previous year with reference to the amount of the income so ascertained and the law then in force; and the difference between the sum so computed and the aggregate of the sums already paid by or on behalf of the assessee in respect of income-tax for such previous year, shall be paid by or refunded to the assessee, as the case may be :

Adjustment with actual income when ascertained.

Provided that no adjustment shall be made under the section in respect of any income-tax assessed or paid before the passing of this Act :

Provided also that it shall be competent to—

- (a) an assessee ; or
- (b) in the case of the death or insolvency of an assessee, his representative in interest ; or
- (c) with reference to any year for which income-tax is leviable under section 14 (2), the collector ; in any year to claim an immediate adjustment to date of the sums already paid by or on behalf of an assessee in that year, upon the basis of the total income actually received by or accrued to him in that year ; and upon such claim being made, all the provisions of this Chapter shall apply, so far as may be necessary for the determination of the proper sum to be paid by or refunded to the assessee or his representative in interest in respect of income-tax down to the date of such determination, and the same shall be paid or refunded accordingly.

20. When the Collector has determined a sum to be payable by an assessee under either section 18 or section 19, he shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

Notice of demand.

21. (1) Any assessee objecting to the amount or rate at which he is assessed under section 18 or to an adjustment made under section 19, or denying his liability to be assessed under this Act may, unless he or, in the case of company, the principal officer thereof, has knowingly and wilfully failed to make a return under section 17, or substantially to comply with all the terms of a notice served on him under section 18, apply to petition to the Commissioner for relief against any order of the Collector in respect of such assessment or adjustment.

(2) The petition shall ordinarily be presented within thirty days of receipt of the notice of demand : but the Commissioner may receive a petition after the expiration of that period, if he is satisfied that the objector had sufficient cause for not presenting it within that period.

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

22. The Commissioner shall fix a day and place for the bearing of the petition, and on the day and at the place so fixed or on the day and at the place if any, to which he has adjourned the hearing, shall hear the petition, and pass such order thereon whether by way of confirmation, reduction, enhancement or cancellation of the assessment, or adjustment, or otherwise and fixing such time for payment as he thinks fit :

23. The Chief Revenue-authority may, of its own motion, call for the record of any assessment proceeding which has been taken by any officer subordinate to it, and make such inquiry and pass such orders thereon as it thinks fit :

Provided that it shall not pass any order enhancing the sum payable by an assessee without hearing him or giving him a reasonable opportunity of being heard either in person or by pleader.

24. If the Collector or the Commissioner in making any assessment or adjustment under this chapter is satisfied that the 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, the Collector or the Commissioner may direct that the assessee shall pay on the difference between his income as finally ascertained and the amount originally returned by his income-tax

at a rate not exceeding double the rate which would otherwise have been payable:

Provided that no such order shall be made, unless the assessee has been heard, or has been given a reasonable opportunity of being heard:

Provided further that no prosecution for an offence against this Act shall be instituted in respect of the same facts which a penal assessment is made under this section.

25. If for any reason income chargeable under this Act has escaped assessment in any year, or has been assessed at too low a rate, the Collector may, at any time in the year next following, assess or re-assess such income, and all the provisions of this Act shall apply accordingly.

Income escaping assessment, assessable in the following year.

26. The Collector may, at any time within one year from the date of any demand made upon an assessee, rectify any mistake in connection therewith which has been brought to his notice by such assessee, and make a refund to such assessee in respect thereof.

Rectification of mistake.

27. The Collector or Commissioner shall, for the purposes of any inquiry under this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, where trying a suit in respect of the following matters:—

Power to take evidence on oath, etc.

- (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 a Collector or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.

28. The Collector or Commissioner may, for the purposes of this Act,

Power to call for information.

(1) require any person to furnish a return, in the prescribed form containing, to the best of his belief, the name and address of every

person employed in his service who is receiving in virtue of such employment any income not chargeable under the head "Salaries," of such amount as may be prescribed, not being less than six hundred rupees per annum ;

(2) require any firm or Hindu undivided family to furnish him with a return of the partners in the firm, or the adult male members of the family, as the case may be, and of their addresses ;

(3) 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.

29. The Collector or Commissioner, or any person authorised in writing in this behalf by the Collector or Commissioner, may inspect and, if necessary, take copies or cause copies to be taken of the register of members of any company or of any entry in such register.

Power to inspect the register of members of any company.

CHAPTER III.

SUMMARY ASSESSMENT.

30. (* * * * *) (Repealed by S. 6 of Act IV of 1919.)

CHAPTER IV.

LIABILITY IN SPECIAL CASES.

31. 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 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, and all the provisions of this Act shall apply accordingly.

32. In the case of income chargeable under this Act which is 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

Courts of Wards, etc.

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 is received, and all the provisions of this Act shall apply accordingly.

33. (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 in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to the 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 Collector or the 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.

34. Any person employed by or on behalf of a person residing out of British India or having any business connection with such person, upon whom the Collector has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for the purposes of this Act, be deemed to be such agent :

Agent to include persons treated as such.

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 Collector as to his liability.

CHAPTER V.
RECOVERY OF TAX.

35. The amount of income-tax specified as payable in a notice of Tax when payable. demand under section 20 or an order under section 22, section 23, or section 24, * * * * *

(Repealed by S. 6 of Act IV of 1919) shall be paid within the time, at the place and to the person mentioned in the notice of 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 notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented a petition under section 21, the Collector may in his discretion treat the assessee as not being in default as long as such petition is undisposed of.

36. (1) When an assessee is in default in making a payment of Mode and time of income-tax, the Collector, in his discretion, may recovery. recover from him a sum not exceeding double the amount of the tax, either as if it were an arrear of any land revenue, or 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 territories administered by the Local Government to which the Collector is subordinate.

(2) If any assessee is in receipt of any income chargeable under the head "Salaries" the Collector may require any person paying the same to deduct from any payment subsequent to the date of such requisition any sum recoverable under sub-section 1, and such person shall comply with any such requisition and shall pay the sums so deducted to the credit of the Government of India, or as the Governor-General in Council directs.

(3) The Local Government 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 (1) for the recovery of income-tax.

(4) The Local Government may direct, with respect to any specified area 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.

(5) Save in accordance with the provisions of section 33 (1), 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.

CHAPTER VI.

REFUNDS TO SHAREHOLDERS AND OTHERS.

37. If—

Refund to individual shareholders, partners, and owners of securities.

- (a) a shareholder in a company who has received any dividend from the company ; or
- (b) a partner in a firm on which income-tax has been levied at the maximum rate, in accordance with the proviso to section 14, who has received a share of the profits of the firm ; or
- (c) the owner of a security from the interest on which income-tax has been deducted in accordance with the provisions of section 15 ;

satisfies the Collector that his total income in the previous year was less than any one, as the case may be, of the amounts specified in Schedule II, he shall be entitled to a refund of a sum calculated on such dividend, share of profits or interest at the rates specified in the same Schedule against each such amount.

38. No claim to any refund under section 37 shall be allowed,

Limitation of claims for refund.

unless it is made within one year from the last day of the year to which the claim relates.

CHAPTER VII.

OFFENCE AND PENALTIES.

39. If a person fails without reasonable cause or excuse—

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

- (a) to deduct and pay any tax as required by section 15 or under section 36 (2) ;
- (b) to deliver or cause to be delivered to the Collector in due time any of the returns mentioned in section 16, section 17, or section 28 ;

(c) to grant inspection or allow copies to be taken in accordance with the provisions of section 29 ;

(d) to attend or to produce, or cause to be produced, on or before the date mentioned in a notice under section 18, such accounts and documents as are referred to in the notice ;

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.

40. If a person makes a statement in a verification mentioned in section 17 or section 21 (3) which is false, and 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.

41. (1) A person shall not be proceeded against for an offence under section 39 or section 40, except at the instance of the Collector.

Prosecution to be at instance of Collector.

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

42. All particulars contained in any statement or return made or furnished under the provisions of this Act shall be treated as confidential, and if a public servant discloses any particulars contained in any statement or return made or furnished under this Act, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine :

Disclosure of information by public servant.

Provided that no prosecution shall be instituted under this section, except with the previous sanction of the Local Government.

CHAPTER VIII.

MISCELLANEOUS.

43. (1) The Governor-General in Council may make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income, and may, subject to such restrictions and conditions as he may impose, delegate to a Local Government the power to

Power to make rules.

make such rules so far as regards the territories subject to that Government.

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

- (a) when income is derived in part from agriculture and in part from business, prescribe the manner, whether with reference to a class or in particular cases, by which the taxable income shall be arrived at ;
- (b) prescribe the manner in which, and the producer by which, the taxable income of Insurance Companies shall be arrived at ;
- (c) prescribe the manner in which and the procedure by which, the taxable income of persons not resident in British India, or of persons deemed to be assesseees in respect thereof, shall be arrived at ;
- (d) provide for a system of compositions of assessments and prescribe the conditions under which the Collector may enter into composition with assesseees as to their assessment ;
- (e) prescribe the procedure to be followed on applications for refunds ;
- (f) provide for any matter which by this Act is to be prescribed.

(3) Rules made under this section shall be published in the Gazette of India or the local official Gazette, as the case may be, and shall thereupon have effect as if enacted in this Act.

44. The Governor-General in Council may, by notification in the Gazette of India, 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.

Power to make exemptions, etc.

45. When any money is paid under this Act to the Collector, or is recovered thereunder by him, he shall give a receipt for the same, specifying the prescribed particulars.

Receipts and their contents.

46. A notice or requisition under this Act may be served on the person therein named, either by post, or by the delivery or tender to him of a copy of the notice or

Service of notices.

requisition in the manner provided by the Code of Civil Procedure, 1908, for the service of summons.

47. (1) When an assessee has several places of business in territories subject to different Local Governments, the Governor-General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his principal place of business.

Power to declare principal places of business.

(2) When an assessee has several places of business in the territories subject to a single Local Government, that Government may declare which of them shall, for the purposes of this Act, be deemed to be its principal place of business.

(3) The powers given by this section may be delegated to, and exercised by, such officer as the Governor-General in Council or the Local Government, as the case may be, may appoint in his behalf.

48. 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.

Indemnity.

49. All powers conferred by, or conferrable under this Act may be exercised from time to time as occasion requires.

Powers exercisable from time to time.

50. The Local Government may, by notification in the local official Gazette, delegate to the Chief Revenue authority all or any of the powers conferred on it by this Act for the appointment of officers to exercise or perform the powers or duties of Collectors or Commissioners, and all or any of the powers conferred on it by section 36 and proviso to section 42.

Delegation of certain powers of Local Government.

51. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VII, a question has arisen with reference to the interpretation of any of the provisions of this Act or of any rule thereunder, the Chief Revenue authority may, either on its own motion or on reference from any Revenue officer subordinate to it, draw up a statement of the case, and refer it, with its own opinion thereon,

Statements of case by Chief Revenue authority to High Court.

THE INDIAN INCOME-TAX ACT

SCHEDULE I.

For Rate of Tax see Appendix IX.

SCHEDULE II.

Rates of Refund Based on Rates Applicable to Individual Shareholders (For which see Appendix IX).

SCHEDULE III.

(See Section 53)

ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1886	II	The Indian Income tax Act, 1886 ...	So much as has not been repealed.
1897	XIV	The Indian Short Titles Act, 1897 ...	So much of the Schedule as relates to the Income-tax Act, 1886.
1903	XI	The Indian Income-tax (Amendment) Act, 1903.	So much as has not been repealed.
1914	IV	The Decentralization Act, 1914 ...	So much of the Schedule as relates to the Indian Income-tax Act, 1886.
1916	V	The Indian Income-tax (Amendment) Act, 1916.	The whole.
1917	VII	The Indian Income-tax (Amendment) Act, 1917.	The whole.

APPENDIX III

ACT NO. II OF 1886.

(29th January, 1886.)

An Act for imposing a tax on income derived from sources other than agriculture.

Whereas it is expedient to impose a tax on income derived from sources other than agriculture ; it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Act extends to the whole of British India and applies also, within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor-General in Council in that behalf ; and

(2) it shall come into force on the first day of April, 1886.

(3) (Rep. by the repealing Act, 1891 (XII of 1891)).

2. On and from the day on which this Act comes into force the enactment specified in the first schedule to this Act shall be repealed, except as to fees payable and other sums due under those enactments and the mode of recovering the same.

3. In this Act unless there is something repugnant in the subject or context,—

(1) " local authority " means any municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of any municipal or local fund ;

(2) " company " means an association carrying on business in British India, whose stock or funds is or are divided into shares and transferable, whether the company is incorporated or not, and whether its principal place of business is situate in British India or not ;

(3) "prescribed" means prescribed by the Governor-General in Council by notification in the Gazette of India, or by the Governor-General in Council or a Local Government by rules made under this Act;

(4) "salary" includes allowances, fees, commissions, perquisites or profits received, in lieu of or in addition to a fixed salary, in respect of an office or employment of profit; but subject to any rules which may be prescribed in this behalf, it does not include travelling, tentage, horse or sumptuary allowance, or any other allowance, granted to meet specific expenditure;

(5) "income" means income and profits accruing and arising or received in British India, and includes, in the case of a British subject within the dominions of a Prince or State in India in alliance with Her Majesty, any salary, annuity, pension or gratuity payable to that subject by the Government or by a local authority established in the exercise of the powers of the Governor-General in Council in that behalf;

(6) "Magistrate" means a Presidency Magistrate or a Magistrate of the first or second class;

(7) "person" includes a firm and a Hindu undivided family;

(8) "defaulter" includes a company or firm making default under this Act;

(9) "Collector" means the chief officer in charge of the revenue administration of a district, in a presidency town, any officer whom the Local Government, by notification in the official Gazette, may, by name or by virtue of his office, appoint to be a Collector for the purposes of this Act; in the case of a company or firm, it means the Collector, as here defined, of the district or presidency town in which its principal place of business in British India is situate; and in the case of any other person chargeable under this Act, it means the Collector, defined as aforesaid, of the district or presidency town in which the person has his residence;

(10) "principal officer," used with reference to a local authority or a company, or any other public body or association not being a local authority or company, 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 Collector has caused a notice to be served of his intention of treating him as the principal officer thereof; and

(11) "Part" means a part of the second schedule to this Act.

CHAPTER II.

LIABILITY TO TAX.

4. Subject to the exceptions mentioned in the next following section, there shall be paid, in the year beginning with the first day of April, 1916, ^{Income liable to the tax.} *(These figures were substituted for "1886" by S. 2 of the Indian Income-tax Amendment Act (V of 1916)) and in each subsequent year, to the credit of the Government of India or as the Governor-General in Council directs, in respect of the sources of income specified in the first column of the second schedule to this Act, a tax at the rate specified in that behalf in the second column of that schedule.

5. (1) Nothing in section 4 shall render liable to the tax—
Exceptions.

- (a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land-revenue or subject to a local rate assessed and collected by officials of the Government, as such; or
- (b) any income derived from—
 - (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 produce raised or received by him; when he does not keep a shop or stall for the sale of such produce; or
- (c) any building owned and occupied by the receiver of the rent or revenue of any such land as is referred to in clause (a), or by the cultivator, or the receiver of rent-in-kind, of any land with respect to which or the produce whereof any operation mentioned in 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, factory or other out-building; or

- (d) any profits of a shipping company incorporated or registered out of British India and having its principal place of business out of India and its ships ordinarily engaged in sea-going traffic out of Indian waters ; or
- (e) any income derived from property solely employed for religious or public charitable purposes ; or
- (f) any income which a person enjoys as a member of a company or of a firm or of a Hindu undivided family when the company or the firm or the family is liable to the tax ; or
- (g) subject to any conditions and restrictions which may be prescribed in this behalf, such portion, not exceeding one-sixth, of the income in respect whereof a person would, but for this exception be chargeable under this Act, as is deducted from the salary of the person under the authority or with the permission of the Government for the purpose of securing a deferred annuity to him or a provision to his wife or children after his death or is paid by the person to an insurance company in respect of an insurance or deferred annuity on his own life or on the life of his wife ; or
- (h) any interest on stock-notes ; or
- (i) the salary of any officer, warrant-officer, non-commissioned officer or private of Her Majesty's Forces or of Her Majesty's Indian Forces who is not in an employment which, according to the ordinary practice, is held indifferently by military persons and civilians, and whose salary does not exceed five hundred rupees per mensem ; or
- (j) any (company or) (These words were inserted by S. 3 of the Indian Income-tax (Amendment) Act (V of 1916)) person whose income from all sources is less than (one thousand) (These words were substituted for the words " five hundred" by the Indian Income tax (Amendment) Act (XI of 1903), S. 2 (1) Gen. Act, Vol. V) rupees per annum.

(2) An officer or servant is not exempt from taxation under this Act by reason only of the income of his employer being exempt therefrom under this section.

6. The Governor-General in Council may, by notification in the Gazette of India, exempt from liability to the tax the whole or any part of the income of any class or tribe, or of any person residing in any specified area, and may, by a like notification, revoke the exemption.

Power to make exemptions.

CHAPTER III.

ASSESSMENT AND COLLECTION.

A—SALARIES AND PENSIONS.

7. In the case of a person receiving any salary, annuity, pension or gratuity from the Government, any sum payable to him by the Government in respect of the salary, annuity, pension or gratuity shall be reduced by the amount of the tax to which he is liable under Part I in respect thereof.

Mode of payment in case of Government officials and pensioners.

8. (1) In the case of a person receiving any salary, annuity, pension or gratuity from a local authority, the tax to which he is liable under Part I shall, at the time of the payment to him of any of the salary, annuity, pension or gratuity, be deducted therefrom by the officer whose duty it is to make the payment, and be paid by that officer within the prescribed time to the credit of the Government of India or as the Governor-General in Council directs.

Mode of payment in case of servants and pensioners of local authorities.

(2) If that officer does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(3) If, when any payment is made, the tax is from any cause not deducted, it may, and on the requisition of the Collector shall, be deducted when any salary, annuity, pension or gratuity is subsequently paid to the person liable to the tax.

(4) The power to deduct under this section shall be without prejudice to any other mode of recovery.

9. (1) The tax to which a person receiving any salary, annuity, pension or gratuity from a company, or from any other public body or association not being a local authority or company, or from a private employer, is liable under Part I shall be payable by him at the time when any portion of the salary, annuity, pension or gratuity is paid to him.

(2) The Collector may, subject to such conditions as may be prescribed, enter into an arrangement with any company, or any such body or association as aforesaid or any private employer, with respect to the recovery on behalf of the Government by the company, body, association or employer of the tax to which any person receiving any salary, annuity, pension or gratuity from the company, body, association or employer is liable under Part I.

10. The principal officer of every local authority, and of every company and of every other public body or association not being a local authority or company, shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, in the prescribed form, a return in writing, showing—

Annual return by principal officer of company or association.

- (a) the name of every person who is receiving at the date of the return any salary, annuity, or pension, or has received during the year ending on that date any gratuity, from the authority, company, body or association, as the case may be and the address of every such person so far as it is known; and
- (b) the amount of salary, annuity pension or gratuity so received by each such person, and the time at which the same becomes payable or, in the case of gratuity, was paid.

B.—PROFITS OF COMPANIES.

11. The principal officer in British India of every company shall prepare, and, on or before the fifteenth day of April in each year, deliver or cause to be delivered to the Collector, a statement in writing signed by him of the net profits made in British India by the company during the year ending on the day on which the company's accounts have been last made up, or, if the company's accounts have not been made up within the year ending on the thirty-first day of March, in the year immediately preceding that

Annual statement of net profits.

for which the assessment is to be made, than of the net profits so made during the year ending on the said thirty-first day of March.

12. (1) If the Collector has reason to believe that a statement, delivered under section 11 is incorrect or incomplete, he may cause to be served on the principal officer of the company a notice requiring him, on or before a date to be therein mentioned, either to attend at the Collector's office and produce, or to cause to be there produced for the inspection of the Collector, such of the accounts of the company as refer to the year to which the statement relates and as are in his possession or power.

Power to require officers of companies to produce accounts.

(2) On the day specified in the notice, or as soon afterwards as may be, the Collector shall, by an order in writing, determine the amount at which the company shall be assessed under Part II, and the time when the amount shall be paid, and, subject to the provisions of this Act, that amount shall be payable accordingly.

C.—INTEREST ON SECURITIES.

13. (1) The tax payable under Part III in respect of the interest on any of the securities mentioned in that part shall, at the time when and place where any of the interest is paid, be deducted therefrom by the person empowered to pay the interest, and be paid by that person within the prescribed time to the credit of Government of India or as the Governor-General in Council directs.

Mode of payment of tax on interest on securities.

(2) If that person does not deduct and pay the tax as required by sub-section (1), he shall, without prejudice to any other consequences which he may incur be deemed to be personally in default in respect of the tax.

D.—OTHER SOURCES OF INCOME.

Ordinary mode of Assessment and Collection.

14. The Collector shall, from time to time, determine what persons are chargeable under Part IV and the amount at which every person so chargeable shall be assessed.

Collector to determine persons chargeable.

14-A. (1) (Inserted by the Indian Income-tax (Amendment) Act (VII of 1977).) In the case of any person whose income, is, in the Collector's opinion, not less than one thousand rupees the Collector may cause a notice to be served upon him requiring him to furnish within such period as may be specified in the notice a return in the prescribed form setting forth (along with such other particulars as may be provided for in the notice) the income accruing to such person during the year ending on the day on which his accounts have been last made up or, if his accounts have not been made up within the year ending on the 31st day of March in the year immediately preceding that for which the assessment is to be made, then the income accruing to him during the year ending on the said 31st day of March.

Notices to persons with incomes of not less than one thousand rupees.

(2) A person making a return required by sub-section (1) shall at the foot thereof make a declaration that the income shown in the return is truly estimated on each of the sources therein mentioned, that it has actually accrued within the period therein stated, and that the person making the return has no other source of income.

15. (1) The assessment shall be made upon the income accruing to the person during the year ending on the day on which his accounts have been last made up, or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then upon the income according to him during the year ending on the said thirty-first day of March.

Mode of making assessment.

(2) In the case of a person for the first time becoming chargeable under Part IV within the year for which the assessment is to be made, or within the year next before that year, the assessment shall be made according to an average of his income for such period as the Collector, having regard to the circumstances, directs.

16. (1) The Collector shall in each year prepare a list of the persons chargeable under Part IV whose annual income does not, in the opinion, amount to two thousand rupees.

List of income under two thousand rupees.

(2) The list shall be in the prescribed language or languages, and shall state in respect of every such person the following particulars, namely :—

- (a) his name, and the source or sources of the income in respect of which he is chargeable ;
- (b) the year or portion of the year for which the tax is to be paid ;
- (c) the place or places, district or districts, where the income accrues ;
- (d) the amount to be paid ; and
- (e) the place where, and the person to whom, the amount is to be paid.

(3) The list shall be filed in the office of the Collector, with a notification prefixed thereto requiring every person mentioned in the list to pay, within sixty days from a date specified in the notification, the amount stated in the list as payable by him, or to apply to the Collector, within thirty days from that date, to have the assessment reduced or cancelled.

(4) The list so filed shall be open to inspection at all reasonable times without any payment.

(5) The list, or such part or parts thereof as the Collector thinks fit, with the notification prefixed thereto, shall be further published in such manner as the Local Government may consider to be best adopted for giving information to all persons concerned.

(6) The list to be prepared in each year may be the list of the previous year with such amendments as the Collector finds to be necessary.

17. In the case of a person chargeable under Part IV whose annual income is, in the Collector's opinion, two thousand rupees or upwards, the Collector shall cause a notice to be served on him stating the particulars (a) to (e) both inclusive, mentioned in section 16, sub-section (2), and requiring him to pay, within sixty days from a date specified in the notice, the amount stated therein as payable by him, or to apply to the Collector, within thirty days from that date to have the assessment reduced or cancelled.

Notices to persons with income of two thousand rupees and upwards.

18. (Amended by the Indian Income-tax (Amendment) Act (VII of 1917). The Collector may include in a list under section 16 any person who is liable to be served with a notice under section 17 instead of or in addition to serving him with such a notice, and may serve a notice under section 17 on any person liable to be included in a list under section 16 instead of or in addition to including him in such a list.

19. Every amount specified as payable in a list or notice prepared or served under section 16 or section 17 shall be paid within the time, at the place and to the person, mentioned in the list or notice.

Trustees, Agents, Managers, and Incapacitated Persons.

20. A person being the trustee, guardian, curator or Committee of any infant, married woman subject to the law of England, lunatic or idiot, and having the control of the property of the infant, married woman, lunatic, or idiot, whether the infant, married woman, lunatic or idiot resides in British India or not, shall, if the infant, married woman, lunatic, or idiot is chargeable under Part IV, be chargeable under that Part in like manner and to the same amount as the infant would be chargeable if he were of full age, or the married woman if she were sole, or the lunatic or idiot if he were capable of acting for himself.

21. Any persons not resident in British India, whether a subject of Her Majesty or not, being in receipt, through an agent, of any income chargeable under Part IV, shall be chargeable under that Part in the name of the agent in the like manner and to the like amount as he would be chargeable if he were resident in British India and in direct receipt of that income.

22. Receivers or managers appointed by any Court in India, the Courts of Wards, the Administrator-General of Bengal, Madras and Bombay, and the Official Trustees shall be chargeable under Part IV in respect of all income officially in their possession or under their control which is liable to assessment under that Part.

23. When a trustee, guardian, curator, committee or agent is, as such, assessed under Part IV, or when a receiver or manager appointed as aforesaid, a Court of Wards, an Administrator-General or Official Trustee is assessed under that Part in respect of income officially received, the person or court so assessed may, from time to time out of the money coming to his or its possession as trustee, guardian, curator, committee or agent, or as receiver, manager, Court of Wards, Administrator-General or Official Trustee, retain so much as is sufficient to pay the amount of the assessment.

Power to retain duties charged on trustees, etc.

OCCUPYING OWNERS.

24. (1) Where a building is occupied by its owner, it shall be deemed a source of income within the meaning of this Act, and, if liable to be assessed under this Act, shall be assessed at five-sixths of the gross annual rent at which it may reasonably be expected to let, and, in the case of a dwelling-house, may be expected to let unfurnished.

Provision for tax on occupying owners.

(2) "Owner," as used in this section with reference to a building, means the person who would be entitled to receive the rent of the building if the building were let to a tenant.

CHAPTER IV.

REVISION OF ASSESSMENT.

25. (1) Any person objecting to the amount at which he is assessed, or denying his liability to be assessed, under Part IV may, unless he has knowingly and wilfully failed to comply with the requirements of any notice served upon him under section 14-A (Inserted by the Income-tax (Amendment) Act (VII of 1917)) apply by petition to the Collector to have the assessment reduced or cancelled.

Petition to Collector against assessment under Part IV.

(2) The petition shall ordinarily be presented within the period specified in the notification prefixed to the list filed under section 16, or in the notice served under section 17, as the case may be. But the Collector may receive a petition after the expiration of that period if he is satisfied that the objector had sufficient cause for not presenting it within that period.

(3) The petition shall, as nearly as circumstances admit, be in the form contained in the third schedule to this Act, and the statements contained in the petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints.

26. The Collector shall fix a day and place for the hearing of the
 Hearing of peti- petition, and on the day and at the place so fixed,
 tion. or on the day and at the place, if any, to which he
 has adjourned the hearing, shall hear the petition and pass such order
 thereon as he thinks fit.

27. Subject to the control of the Local Government, the Commis-
 sioner of the Division, on the petition of any person
 Petition to Com- sioner for rev- deeming himself aggrieved by an order under section
 missioner for revi- sion. 12, sub-section (2), or section 26 shall, if the amount of the assessment to
 which the petition relates is two hundred and fifty rupees, or upwards, and
 may in his discretion if the amount of the assessment is less than two
 hundred and fifty rupees, call for the record of the case, and pass such order
 thereon as he thinks fit.

28. The Collector or Commissioner may, for the purpose of enabling
 him to determine how the petitioner or the company
 Power to summon which he represents should be assessed, summon and
 witnesses, etc. enforce the attendance of witnesses and compel them to
 give evidence, and compel the production of documents, by the same means
 and, as far as possible, in the same manner as is provided in the case of a
 Civil Court by the Code of Civil Procedure. (See now the Code of Civil
 Procedure, 1908 (Act V of 1908), General Acts, Vol. VI.)

Provided that the Collector or Commissioner shall not call for any
 evidence except at the instance of the petitioner or in order to ascertain the
 correctness of facts alleged by him.

CHAPTER V.

RECOVERY OF ARREARS OF TAX.

29. The tax chargeable under this Act shall be payable at the time
 appointed in that behalf in or under this Act, or, if a
 Tax when payable. time is not so appointed, then on the first day of June
 in each year.

30. (1) In any case of default under this Act the Collector, in his discretion, may recover a sum not exceeding double the amount of the tax either as if it were an arrear of land revenue or 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 territories administered by the Local Government to which he is subordinate, or may pass an order that a sum not exceeding double that amount shall be recovered by that order:

Mode and time of recovery. Provided that, where a person has presented a petition under section 25, such sum shall not be recoverable from him unless, within thirty days from the passing of the order on the petition, he fails to pay the amount, if any, required by that order.

(2) The Local Government 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 (1) for the recovery of the tax chargeable under this Act.

(3) An order passed by the Collector under sub-section (1) shall have the force of a decree of a Civil Court in a suit in which the Government is the plaintiff and the defaulter is the defendant; and the order may be enforced in manner provided by the Code of Civil Procedure (See now the Code of Civil Procedure, 1908 (Act V of 1908) General Acts, Vol. VI) for the enforcement of decrees for money; and the procedure under the said Code in respect of the following matters, namely—

- (a) sales in execution of decrees,
- (b) arrest in execution of decrees for money,
- (c) execution of decrees by imprisonment,
- (d) claims to attached property, and
- (e) execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued for levying the sum mentioned in the order; save that all the powers and duties conferred and imposed by the said Code upon the Court shall be exercised and discharged by the Collector by whom the order has been made or to whom a copy thereof has been sent for execution according to the provisions of the said Code, sections 223 and 224.

(4) The Local Government may direct, with respect to any specified area, that the tax chargeable under this Act 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.

(5) No proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of three months from the last day of the year in respect of which sum is payable.

SUPPLEMENTAL PROVISIONS.

COMPOSITION.

31. (1) If a company or person desires to compound for the tax assessable under Part II or Part VI, as the case may be, the Collector may, subject to such rules as may be prescribed in this behalf, agree with the company or person for a composition for the tax on such terms and for such period as he thinks fit.

Agreements for composition.

(2) The agreement shall provide for the payment in each year of the period comprised in the agreement of the amount of the composition; and that amount shall be recoverable in the same manner and by the same means as any other assessment made under Part II or Part IV, as the case may be.

(3) (This sub-section was added by S. 4 of the Indian Income-tax (Amendment) Act 1916 (V of 1916).) Any agreement made in accordance with the provisions of this section shall be determined, as regards any tax not already due thereunder, by any change, subsequent to the making of such agreement, in the rates at which the tax is assessable under Part II or Part IV, as the case may be, with effect from the date on which such change comes into force.

RECEIPTS.

32. When any money is paid under this Act to the Collector or is recovered thereunder by him, he shall give a receipt for the same, specifying—

Receipts and their contents.

(a) the date of payment or recovery of the money;

(b) the amount paid or recovered;

- (c) the person who was liable to the tax, and the source or sources of income in respect of which the tax was payable ;
- (d) the year or part of the year for which the tax was payable ;
- (e) the place or places, district or districts, where the income accrues ; and
- (f) such other particulars, if any, as may be prescribed.

AMENDMENT OF ASSESSMENT.

33. If a company or person assessed under Part II or Part IV ceases to carry on the trade or business in respect whereof the assessment was made, or if any such person dies or becomes insolvent before the end of the year for which the assessment was made, or if any such company or person is, from any other specific cause, deprived of or loses the income on which the assessment was made, then the company or person or its or his representative in interest may apply to the Collector * * *

* * (The words "during or within three months after the end of the year" were repealed by S. 5 of the Indian Income-tax (Amendment) Act, 1916 (V of 1916) and the Collector, on proof to his satisfaction of any such cause as aforesaid, shall amend the assessment as the case may require, and refund such sum, if any, as has been overpaid.

PENALTIES.

34. (1) If a person fails—

Failure to make payment or deliver returns of statements.

- (a) to deduct and pay any tax as required by section 8, sub-section (1), or section 13, sub-section (1), or
- (b) to deliver or cause to be delivered to the Collector in due time the return or statement mentioned in section 10 or section 11, or
- (c) to produce, or cause to be produced, on or before the date mentioned in a notice under section 12, such accounts as are referred to in the notice,

(d) (Inserted by the Indian Income-tax (Amendment) Act, 1917 (VII of 1917) to furnish within the specified period a return required of him under section 14-A, 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.

(2) The Commissioner of the Division may remit wholly or in part any fine imposed under this section.

35. If a person makes a statement in a declaration (required under section 14-A, sub-section (2) (Amended by the Indian Income-tax (Amendment) Act, 1917 (VII of 1917)) which is false, and which he neither 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. (See now the revised edition of the Code as modified up to 1st June, 1910.)

36. A person shall not be proceeded against for an offence under section 34 or section 35, except at the instance of the Collector.

37. Any proceeding under section 12 of Chapter IV of this Act shall be deemed to be a "judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. (See now the revised edition of the Code as modified up to 1st June, 1910.)

POWER TO MAKE RULES.

38. (1) The Governor-General in Council may make rules consistent with this Act for ascertaining and determining income liable to assessment, for preventing the disclosure of particulars contained in documents delivered or produced with respect to assessment under Part IV (for prescribing the procedure to be followed on applications for refund of the tax chargeable under this Act) (These words were inserted by S. 6 of the Indian Income-tax (Amendment) Act, 1916 (V of 1916)) and generally for carrying out the purposes of this Act, and may delegate to a Local Government the power to make such rules so far as regards the territories subject to that Government.

(2) In making a rule for preventing the disclosure of any particulars referred to in sub-section (1), the Governor-General in Council may direct that a public servant committing a breach of the rule shall be deemed to have committed an offence under section 166 of the Indian Penal Code. (See now the revised edition of the Code as modified up to 1st June, 1910.)

(3) But a person committing any such offence shall not be liable to be prosecuted thereof without the previous sanction of the Local Government.

(4) Rules made under this section shall be published in the official Gazette.

MISCELLANEOUS.

39. No suit shall lie in any Civil Court to set aside or modify any assessment made under this Act.

Bar of suits in
Civil Court.

39-A. No claim for refund of tax under this Act shall be allowed, unless it is made within one year from the end of the year to which the claim relates. (This section was inserted by S. 7 of the Indian Income-tax (Amendment) Act, 1916 (V of 1916).)

Limitation of claims
for refund.

40. All or any of the powers and duties conferred and imposed by this Act on a Collector or on a Commissioner of Division may be exercised and performed by such other officer or person as the Local Government appoints in this behalf.

Exercise of powers
of Collector and
Commissioner.

41. An officer or person exercising all or any of the powers of a Collector under this Act may, by notice, require any person to furnish a list, in the prescribed form, containing, to the best of his belief,—

Obligation to fur-
nish information
respecting lodgers
and employees.

(a) the name of every inmate or lodger resident in any house used by him as a dwelling house or let by him in lodgings ;

(b) the name of every other person receiving salary or emoluments amounting to (eighty-three rupees, five annas and four pies) (These words were substituted for forty-one rupees,

ten annas and eight pies "and" five hundred respectively by the Indian Income-tax (Amendment) Act 1903 (XI of 1903), S. 2 (2) Genl. Acts, Vol. V.) per mensem, or (one thousand) rupees per annum, or upwards, employed in his service whether resident in any such house as aforesaid or not ; and

(c) the place of residence of such of those persons as are not resident in any such house, and of any inmate or lodger in any such house who has a place of residence elsewhere at which he is liable under this Act to be assessed at that place.

42. An officer or person exercising all or any of the powers aforesaid may, by notice, require any person whom he has reason to believe to be a trustee, guardian, curator, committee or agent to deliver or cause to be delivered a statement of the names of the persons for or of whom he is trustee, guardian, curator, committee or agent.

Trustees and agents to furnish information as to beneficiaries and principals.

43. An officer or person exercising all or any of the said powers may, by notice, require a trustee, guardian, curator, committee, or agent, or a receiver or manager appointed by any Court in India, or Court of Wards, Administrator-General or Official Trustee, to furnish such returns of income liable to assessment under Part IV as may be prescribed.

Trustees, etc., to furnish information as to income.

44. An officer or person exercising all or any of the said powers may, at the instance of any person respecting whose assessment or the amount thereof any doubt exists, require any person to furnish such information as he deems to be necessary for the purpose of ascertaining facts relevant to the assessment or its amount.

Obligation to furnish other information.

45. A person required to furnish any information under section 41, section 42, section 43 or section 44 shall be legally bound to furnish the same in such manner and within such time as may be specified in the requisition for the information.

Sections 176 and 177 of Penal Code to apply to requisitions for information.

46. (1) A notice under this Act may be served on the person therein named either by a prepaid letter addressed to the person and registered under Part II of the Indian Post Office Act, 1866, (see now the Indian Post Office Act, 1898 (VI of 1898), Genl. Acts, Vol. V) or by the delivery or tender to him of a copy of the notice.

(2) If a notice is served by registered letter, it shall be presumed to have been served at the time when the letter would be delivered in the ordinary course of post, and proof that the letter was properly addressed and put into the post shall be sufficient to raise the presumption that the notice was duly served at that time.

(3) If the notice is to be served otherwise than by registered letter, the service shall, whenever, it may be practicable, be on the person named in the notice, or, in the case of a firm, on some member thereof, or, in the case of a Hindu undivided family, on the manager of the joint estate of the family.

(4) But when the person, member or manager cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the serving officer shall fix the copy of the notice on the outer door of the house, in which the person, firm or family therein named ordinarily resides or carries on business.

47. (1) When a company or firm has several places of business in territories subject to different Local Governments, the Governor-General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be principal place of business.

(2) When a company or firm has several places of business in the territories subject to a single Local Government, that Government may declare which of them shall, for the purposes of this Act, be deemed to be the principal place of business.

(3) When a person has several places of residence in territories subject to different Local Governments, the Governor-General in Council may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(4) When a person has several places of residence in the territories subject to a single Local Government, that Government may declare which of those places shall, for the purposes of this Act, be deemed to be his residence.

(5) The powers given by this section may be delegated to, and exercised by, such officers as the Governor-General in Council or the Local Government, as the case may be, appoints in this behalf.

48. Where a person is in respect of any period liable to the tax under this Act, he shall not, in respect of that period, be assessed * * * * (The words "to the pandhari-tax levied in the Central Provinces under Act XIV of 1867 or" were repealed by Act VI of 1902) to the capitation-tax, or the land rate in lieu thereof, levied in British Burma (The reference to British Burma should now be read as referring to Lower Burma,—see the Burma Laws Act, 1898 (XIII of 1898), S. 7, Burma Code) under the Burma Land Revenue Act, 1867 (Burma Code).

Saving in favour of payers of capitation-taxes.

49. Every person deducting, retaining or paying any tax in pursuance of this Act or of any arrangement under section 9, sub-section (2), in respect of income belonging to another person, is hereby indemnified for the deduction, retention, or payment thereof.

Indemnity.

50. All powers conferred by, or conferrable under, this Act may be exercised from time to time as occasion requires.

Powers exercisable from time to time.

50-A. (This section was added by S. 2 and Part I of schedule to the Decentralization Act, 1914 (IV of 1914).) The Local Government may, by notification in the local official Gazette, delegate all or any of the powers conferred on it by section 15 (5), * * * * (Repealed by the Indian Income-tax (Amendment) Act, 1917 (VII of 1917) 30 (2), (4), 38 (3) and 40 to the Chief Revenue authority, by which expression is meant the Board of Revenue or the Financial Commissioner in those provinces where these authorities exist and in any other case authority as the Local Government may declare to be the Chief Revenue authority.

Delegation of certain powers of Local Government.

THE FIRST SCHEDULE.

Enactments Repealed.

(See section 2.)

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II of 1878.	The Northern India License Act, 1878.	So much as has not been repealed.
Act No. VI of 1880.	The Indian License Acts Amendment Act, 1880.	The whole.

ACTS OF THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. III of 1878.	The Madras License Act, 1878 ...	So much as has not been repealed.
Act No. III of 1880.	An Act to amend Madras Act III of 1878, as amended by Act VI of 1880.	The whole.

ACT OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. III of 1878.	The Bombay License Act, 1878 ...	So much as has not been repealed.

ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
Act No. II of 1880.	The Bengal License Act, 1880 ...	The whole.

THE SECOND SCHEDULE.

Sources of Income and Rates of Tax.

(See section 4.)

(See Appendix IX for rates, etc.)

THE THIRD SCHEDULE.

Form of Petition.

To The Collector of

The day of

188 .

The petition of A. B. of

sheweth as follows:—

1. Under Act No. II of 1886, your petitioner has been assessed in the sum of rupees for the year commencing the first day of April, 188 .

2. Your petitioner's income and profits accruing and arising from (here specify petitioner's trade or other source or sources of income or profits and the place or places at which such income or profits accrue or arise) for the year ending the day of last were rupees

(as will appear from the documents of which a list is presented herewith) (these words are to be inserted if the petitioner relies on documents. The list, if the petitioner so wishes, may be presented in a sealed envelope).

3. Such income and profits actually accrued and arose during a period of months and days (here state the exact number of months and days in which the income and profits accrued and arose).

4. During the said year your petitioner had no other income or profits.

Your petitioner therefore prays that he may be assessed accordingly (or that he may be declared not to be chargeable under the said Act).

(Signed) A. B.

Form of Verification.

I, A. B. the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

(Signed) A. B.

APPENDIX IV

GOVERNMENT TRADING TAXATION ACT, 1926

An Act to determine the Liability of Certain Governments to Taxation in British India in respect of Trading Operations.

WHEREAS it is expedient to determine the liability to taxation for the time-being in force in British India of the Government of any part of His Majesty's dominions, exclusive of British India, in respect of any trade or business carried on by or on behalf of such Government : It is hereby enacted as follows :—

1. (1) This Act may be called the Government Trading Taxation Short title. Act, 1926.

(2) It shall come into force on such date as the Governor-General in Commencement. Council may, by notification in the Gazette of India, appoint.

2. (1) Where a trade or business of any kind is carried on by or on behalf of the Government of any part of His Majesty's Liability of certain Governments to taxation in respect of trading operations. Dominions, exclusive of British India, that Government shall, in respect of the trade or business and of all operations connected therewith, all property occupied in British India and all goods owned in British India for the purposes thereof, and all income arising in connection therewith, be liable

(a) to taxation under the Indian Income-tax Act, 1922, in the same manner and to the same extent as in the like case a company would be liable;

(b) to all other taxation for the time being in force in British India in the same manner as in the like case any other person would be liable.

(2) For the purposes of the levy and collection of income-tax under the Indian Income-tax Act, 1922, in accordance with the provisions of sub-section (1), any Government to which that sub-section applies shall be deemed to be a company within the meaning of that Act, and the provisions of that Act shall apply accordingly.

(3) In this section the expression "His Majesty's Dominions" includes any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

APPENDIX V

Adaptations of the Indian Income-tax Act, 1922, to provide for the summary assessments of income-tax on total incomes of less than Rs. 2,000.

1. The Income-tax Officer may, save where he has served a notice under sub-section (2) of section 22 of the Indian Income-tax Act, 1922, make a summary assessment of the income of an assessee to the best of his judgment, and shall serve on the assessee a notice of demand in a form to be prescribed by the Central Board of Revenue ; and such notice shall be deemed to be a notice of demand under section 29 of that Act.

2. Any assessee in respect of whom such summary assessment has been made may, within thirty days of receipt of the notice of demand, make an application to the Income-tax Officer for the cancellation or revision of the assessment, and the Income-tax Officer shall, after examining any accounts and documents and hearing any evidence which the assessee may produce, and such other evidence as the Income tax Officer may require, determine, by order in writing, the amount of the tax, if any, payable by the assessee, and such determination shall be final :

Provided that, if any assessee making such application files therewith a return of his income under sub-section (2) of section 22 of the Indian Income-tax Act, 1922, the application shall be deemed to be a return under that sub-section and shall be dealt with accordingly.

3. A copy of an order under paragraph 2 shall be served on the assessee to whom it relates and shall be deemed to be a notice of demand under section 29 of the Indian Income-tax Act, 1922.

4. The above procedure shall apply also to the assessment and collection during financial year 1934-35 of incomes of Rs. 1,000 and upward and less than Rs. 2,000 which have escaped assessment in the financial year 1933-34.

NOTE.—This has only a historical interest as the lower limit of tax has since been abolished.

APPENDIX VI

INDIAN FINANCE ACT, 1936

1. (1) This Act may be called the Indian Finance Act, 1936.

5. (1) Income-tax for the year beginning on the 1st day of April, 1936, shall be charged at the rate specified in Part I of the Second Schedule, increased in each case, except in the case of total incomes of less than two thousand rupees, by one-sixth of the amount of the rate.

(2) The rates of super-tax for the year beginning on the 1st day of April, 1936, shall for the purposes of section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of the Second Schedule, increased in each case by one-sixth of the amount of the rate.

(3) For the purposes of the Second Schedule "total income" means total income as determined for the purposes of income tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

(4) For the purposes of assessing and collecting income-tax on total incomes of less than two thousand rupees the Indian Income-tax Act, 1922, shall be deemed to be subject to the adoptions set out in Part III of the Second Schedule.

PART I.

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.

(1) When the total income is Rs. 2,000 or Six pies in the rupee, upwards, but is less than Rs 5,000.

(2) When the total income is Rs. 5,000 or upwards, but is less than Rs. 10,000.	Nine pies in the rupee.
(3) When the total income is Rs. 10,000 or upwards, but is less than 15,000	One anna in the rupee.
(4) When the total income is Rs. 15,000 or upwards, but is less than Rs. 20,000.	One anna and four pies in the rupee.
(5) When the total income is Rs. 20,000 or upwards, but is less than Rs. 30,000.	One anna and seven pies in the rupee.
(6) When the total income is Rs. 30,000 or upwards, but less than Rs. 40,000.	One anna and eleven pies in the rupee.
(7) When the total income is Rs. 40,000 or upwards, but is less than Rs. 1,00,000	Two annas and one pie in the rupee.
(8) When the total income is Rs. 1,00,000 or upwards.	Two annas and two pies in the rupee.
B. In the case of every company and registered firm, whatever its total income.	Two annas and two pies in the rupee.

PART II.

Rates of Super-tax.

In respect of the excess over thirty thousand rupees of total income—	Rate.
(1) In the case of every company—	
(a) in respect of the first twenty thousand rupees of such excess.	Nil.
(b) for every rupee of the remainder of such excess.	One anna in the rupee.

(2) (a) in the case of every Hindu undivided family—

- | | |
|------------------------------------------------------------------------------|---------------------------------------|
| (i) in respect of the first forty-five thousand rupees of such excess. | Nil. |
| (ii) for every rupee of the next twenty-five thousand rupees of such excess. | One anna and three pies in the rupee. |

(b) In the case of every individual, unregistered firm and other association of individuals not being a registered firm or a company—

- | | |
|-------------------------------------------------------------------------|---------------------------------------|
| (i) for every rupee of the first twenty thousand rupees of such excess. | Nine pies in the rupee. |
| (ii) for every rupee of the next fifty thousand rupees of such excess. | One anna and three pies in the rupee. |

(c) In the case of every individual, Hindu undivided family, unregistered firm and other association of individuals not being a registered firm or a company—

- | | |
|-------------------------------------------------------------------------|------------------------------------------|
| (i) for every rupee of the next fifty thousand rupees of such excess. | One anna and nine pies in the rupee. |
| (ii) for every rupee of the next fifty thousand rupees of such excess. | Two annas and three pies in the rupee. |
| (iii) for every rupee of the next fifty thousand rupees of such excess. | Two annas and nine pies in the rupee. |
| (iv) for every rupee of the next fifty thousand rupees of such excess. | Three annas and three pies in the rupee. |
| (v) for every rupee of the next fifty thousand rupees of such excess. | Three annas and nine pies in the rupee. |
| (vi) for every rupee of the next fifty thousand rupees of such excess. | Four annas and three pies in the rupee. |

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|--------------------------------------------------------------------------|-----------------------------------------|
| (vii) for every rupee of the next fifty thousand rupees of such excess. | Four annas and nine pies in the rupee. |
| (viii) for every rupee of the next fifty thousand rupees of such excess. | Five annas and three pies in the rupee. |
| (ix) for every rupee of the next fifty thousand rupees of such excess. | Five annas and nine pies in the rupee. |
| (x) for every rupee of the remainder of such excess. | Six annas and three pies in the rupee. |
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APPENDIX VI.

Income-tax Amendment Act of 1937.

(ACT No. 4 OF 1937).

WHEREAS it is expedient further to amend the Indian Income-tax Act 1922, for the purposes hereinafter appearing ; It is enacted as follows:—

1. This Act may be called the Indian Income-tax (Amendment) Act, 1937.

Short title.

2. To section 16 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act), the following sub-section shall be added, namely:—

XI of 1922.

Amendment of section 16, Act XI of 1922.

“(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."

Amendment
of section
18, Act XI
of 1922.

3. To sub-section (5) of section 18 of the said Act the following proviso shall be added, namely:—

"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."

A amendment
of section
48, Act XI
of 1922.

4. After sub-section (3) of section 48 of the said Act the following sub-section shall be inserted, namely:—

"(3 A) 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."

Operation
of section 2.

5. The amendment made in the said Act by section 2 shall not have effect in respect of any income chargeable to income-tax for any year ending before the 1st day of April, 1937.

The above act was assented to by the Governor-General on March 4, 1937, and was published in the Gazette of India on March 13, 1937.

The new rule in sub-section 3 of section 16 of the Indian Income-tax Act 1922 refers only to the assessment of individuals but will not apply to the Hindu Undivided Family at all.

Adequate consideration.

The word consideration is defined in the Indian Contract Act, 1872, as follows:—

“When at the desire of the promisor promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing some such act or abstinence or promise is called a consideration for the promise” (section 2 of Act IX of 1872).

It would appear from the above definition that consideration need not necessarily be estimable in money. The above definition of consideration is wider than the definition of consideration in English Law, where consideration is confined to something valuable. “A consideration must not only be something which the promisor asked for, and got, but must be ‘good’ or ‘valuable’ that is to say something which not only the parties regard, but the law can regard, as having value.” (Mulla’s Contract Act page 31). Consideration in Indian law means any detriment suffered by the promisee on the faith of promisor’s promise, (1918 M. W. N. 173, 44 T. C. 478). Thus alteration of the position of one party by offer of another is consideration (A. I. R. 1925 Cal. 94). Remuneration to a respondent for supplying appellant funds and otherwise assisting him in appeal, has been held to be valid consideration, (A. I. R. 1932 p. c. 276) So has an agreement to adopt, been held to be a valid consideration (24 A. L. J. 186=A. I. R. 1926 All. 194).

Adequate.

As shown above, consideration according to Contract Act need not be estimable in money. The word adequate seems to add to the definition of the Indian Contract Act, the ingredients of English definition of consideration, so that consideration for the purpose of the amendment to Income-tax Act, should be such as has value, and a value which would be regarded as enough.

In every case, it would be a question of fact whether the consideration is adequate and the question will have to be decided with reference to the facts and circumstances of the case. The same consideration may be adequate with reference to the circumstances of one individual while it may be utterly inadequate under different circumstances. The adequacy or otherwise of consideration is a question of fact.

Money paid by a Muslim to his wife as Dower (Meher) is a payment for adequate consideration and any income from the investment of such money will be her income and cannot be grouped with her husband's. Income arising from investment of Hindu wives' 'Stridhan' is their own income and cannot be added to their husbands' income under the new sub-section (3) of section 16. Whether any particular investment constitutes 'stridhan' is a question of fact to be determined on the evidence produced.

Sections 3 and 4 make consequential changes in section 18 (5) and 48.

APPENDIX VII.**The India, Burma and Aden (transitory provisions) Taxation Order, 1937.**

**At the Court at Buckingham Palace,
the 18th day of March, 1937.**

Present:

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas by section three hundred and ten of the Government of India Act, 1935 (hereafter in this Order referred to as "the India Act"), and by section one hundred and fifty-six of the Government of Burma Act, 1935 (hereafter in this Order referred to as "the Burma Act"), His Majesty in Council is empowered, for the purpose of facilitating the transition from the provisions of the Government of India Act, to make temporary provision for the purpose of removing any difficulties arising in relation to the said transition :

And whereas a draft of this Order has been laid before parliament in accordance with the provisions of subsection (1) of section three hundred and nine of the India Act and subsection (1) of section one hundred and fifty-seven of the Burma Act, and an Address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order :

Now, therefore, His Majesty, in the exercise of the said powers and of all other powers enabling him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

I. This Order may be cited as the India, Burma and Aden (Transitory Provisions Taxation) Order, 1937.

2. The Interpretation Act, 1889, applies for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

3. In this Order—

“Separation” means the separation of Burma and Aden from India; “the three countries” means India, Burma and Aden;

“Central taxation” means all taxes, duties, charges, fines and penalties payable or about to become payable under, or in accordance with the provisions of, the Acts specified in the Schedule to this Order;

“Outstanding Central taxation” means Central taxation which had become payable before separation, or which could have become payable before separation if the existence and extent of the liability had been determined in time.

4.—(1) Separation shall not affect—

(a) The amount payable by any person in respect of outstanding Central taxation;

(b) the amount to be allowed, by way of drawback, refund, rebate, or credit in assessment, to any person in respect of Central taxation, paid or treated as paid, before separation, or in respect of deposits made before separation as security for payment of Central taxation, or in respect of outstanding Central taxation paid after separation.

(2) The said amounts shall remain or become payable, or, as the case may be, be allowed, in the same places as if separation had not taken place, and the enactments relating to the assessment, demand

and recovery of Central taxation shall throughout the three countries, continue to apply as nearly as may be, in relation to those amounts as if there had been no separation;

Provided that any amount paid or allowed after separation shall be paid or allowed for the benefit or at the expense of the Government of that one of those countries in which the place in which the amount first became payable or was allowed is situated, and where any amount which became payable in one of the three countries is recovered in another, any necessary adjustments shall be made between the revenues of those countries accordingly.

(3) After separation the same consequences shall flow in each of the three countries from the stamping outside that country of any document executed before separation, as would have followed therefrom if there had been no separation.

M. P. A. HANKEY.

Extracts copy of pages 359 to 361 of Gazette of India Extraordinary, dated the 1st April 1937.

SCHEDULE.

The Indian Income-tax Act, 1922.

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