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INCOME-TAX LAW
AND
PRACTICE IN INDIA

ANANDAGOPAL BANERJEE M.A., A.C.A.

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PREFACE

Third Edition :

It is gratifying that a third edition of the book has been called for in a comparatively short time. The Council of the Institute of Chartered Accountants of India has included this publication in the list of books recommended for study by the candidates preparing for the Chartered Accountants' Examination. The book has been thoroughly revised by incorporating legislative changes up to 30th September 1950. Most of the illustrations have been revised with new rates while some new illustrations have also been added.

I am grateful for the valuable suggestions received from numerous readers and I welcome them again for future editions.

Income-tax Department,
National Bank of India Ltd.,
19, Netaji Subhas Road,
Calcutta—1, 5th October, 1950.

A. G. BANERJEE

First Edition :

In view of the excellent works on the subject of Income-tax already in the market, some explanation of the special features claimed for the present work may not be out of place. It seeks to fulfil the double function of a Text Book suitable for the students preparing for the Professional Examinations and a useful work of reference to those whose duties include the advising of tax-payers on the many and varied problems which arise under our Income-tax Laws. The use of practical illustrations showing the working and effect of all the principles and the inclusion of subsidiary Provisions and Rules are the essential features of the book. With the particular needs of the students, forty examples have been included on the assumption that they have no previous knowledge of the subject whatsoever. Names, Addresses and particulars given in the Illustrations are all fictitious and used for illustrative purposes only.

In writing the book I have consulted many authoritative publications on the subject with special reference to the Income-tax Manual, The Law of Income-tax in India by V. S. Sundaram, the Indian Income-tax Act, 1922 by A. N. Aiyar and the Indian Income-tax Act by A. C. Sampath Iyengar and I owe my indebtedness to the authors and publishers of them. I have also consulted my numerous friends to whom I offer my sincere thanks. Lastly, I thank my assistant Mr. P. K. Mitter, B.A. for going through the proofs.

Suggestions from readers with regard to additions and alterations in future editions of the book will be welcome and given careful consideration.

2nd, January, 1946.

A. G. BANERJEE.

INCOME-TAX LAW & PRACTICE IN INDIA

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CHAPTER I

THE INCOME TAX LAW AND ITS ADMINISTRATION

§1—The Evolution of Income-tax Law & Practice—Income-tax was introduced in India in 1860. But instead of an indigenous model adopted to local circumstances, Government unfortunately followed the law which was in force in England. Direct taxation in India thus satrted on a wrong basis from which it could not easily recover. Possibly with time and care a great improvement could have been effected had the law remained unaltered. But unluckily it was utilized as a convenient means of balancing budget inequalities and a great reserve in every financial or national emergency. In addition to the changes in rate and incidence, changes in name, form, classification and procedure were followed with one object or another and 23 Acts on the subject were passed between 1860 and 1886.

The Act of 1886 worked smoothly so long as the rate of tax was low. Slight inequalities in assessment were neither objected by the Government nor by the Tax-payer. The war necessitated increased taxation and Income-tax had to make up its share. The system of assessment was radically changed owing to the increase in rates coupled with steeper graduation in 1916 and again in 1918. Within a few years the new Act showed that it should also be substantially revised and the Government of India appointed Committees in each Province to examine and recommend necessary alterations. An All-India Committee was appointed in 1921 and the Act of 1922 which is in force now, was based on the recommendation of this Committee. This Act was made a mere act of machinery and procedure leaving the actual charge of tax to be made by the Annual Finance Acts. After passing several amendments to this Act the Government appointed an Expert Committee in 1935 to investigate the Law in all its aspects and to report upon both the incidence of tax and the efficiency of its administration. The Committee made an extensive tour throughout India, during which a detailed examination of the organisation and work of the Department were carried out as also the representations of the various Chambers of Commerce and other public bodies were considered.

The Law which was radically changed in 1939 on the recommendations of 1935 Committee, for the first time imposed taxation in respect of foreign income on accrual basis under certain circumstances in the hands of certain categories of tax-payers classified on the basis of their physical presence in India. The rates of income-tax were changed from "Step system" to "Slab system" by which successive slice of total income were charged at progressively higher rates, the first slice bearing no tax whatsoever. The rates imposed in 1939 were subsequently increased year after year for raising additional revenue to meet ever increasing defence expenditure for the World War II (1939-45). A distinction was, however, made in 1945 between incomes that are earned by personal exertion and incomes that are not so earned. A certain percentage of the earned income was excluded from the total income for calculating income-tax but not super-tax. The minimum exemption limit for income-tax was raised from Rs. 2,000 to

Rs. 2,500 in 1947, to Rs. 3,000 in 1948 and finally to Rs. 3,600 in 1950 giving much relief to a considerable number of tax-payers.

The Income-tax Law being a complicated subject, circumstances arise from time to time when the strict application of the Act is either impossible altogether, extremely difficult, or inconvenient or grossly unfair and inequitable. As a result a practice has arisen of dealing with the position in a way not strictly authorised by the Act but just and convenient in effect. Such practice has been acknowledged not only by the Revenue Authorities but also by the Legislature. The tax-payer is not bound to comply with these extra legal practices, where it is not to his advantage, and as a matter of fact they mostly operate in the assessee's favour for that very reason. Instances will be referred to in later chapters where practices have arisen, which are of wide importance.

§2—Scope of the Act (Sections 1 and 4) —The Act applies to an income which accrues or arises within the country (irrespective of the place of its receipt) as also to an income which is received within the country (irrespective of the place of accrual) the status, nationality or residence of the recipient being immaterial. The Act further applies to an income which accrues, arises or is received outside the country provided the recipient is "Resident and ordinarily Resident" of the country. The application, however, has primary reference to the liability to tax and as such the Act can be enforced only when the liability is determinable.

Prior to 15th August 1947 the Act applied territorially to the whole of British India including Berar. British India meant the provinces of Bengal, Bombay, Madras, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind and the Chief Commissioner's provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicober Islands.

During 15th August 1947 to 25th January 1950 the territorial jurisdiction comprised of the Provinces of India including Chief Commissioner's Provinces which were West Bengal, Bombay, Madras, the United Provinces, East Punjab, Bihar, the Central Provinces and Berar, Assam, Orissa, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands.

The territorial jurisdiction was extended on the 26th January 1950 by including the States of Bhopal, Bilaspur, Cooch-Behar, Himachal Pradesh and Kutch. On 1st April 1950 the following States were added—Hyderabad, Madhya Bharat, Mysore, Rajasthan, Sourashtra, Travancore, Cochin, Vindhya pradesh, Manipur and Tripura. East Punjab States Union came in the picture on the 13th April 1950 from which date the Act applies territorially to the whole of India except the State of Jammu and Kashmir and only personally to those persons who are resident within this State and are in the service of the Government of India or of a State other than Jammu and Kashmir.

§3—Administration (Section 5):

(a) Income-tax Officers—The Administration of the Law is vested primarily in the hands of the Income-tax Officers who are appointed to issue notice, examine evidence and assess income. The Income-tax Officers are assisted by Subordinate Officers styled Inspectors whose work consists of the examination of the assessees' books of account and out-door

inspection for the purpose of discovering new assesses and of making enquiries regarding the new sources of income of the existing assessees. In addition, the Income-tax Officers are also helped by clerks who are appointed to perform various clerical and other duties preliminary to or consequent upon their orders.

While the Income-tax Officers are normally appointed in relation to an area there are certain classes of assessees whose assessments are made by an All-India Staff. The cases of the Officers of the Military and other Departments of the Government of India who are liable to be transferred from one Province to another and that of some Railway, Insurance of Banking Companies are dealt with by Special Officers for the whole of India.

(b) Inspecting Assistant Commissioners—Administratively the Income-tax Officers are under the control of Inspecting Assistant Commissioners who are in their turn responsible to the Commissioners for seeing that the work in the circles under their control are efficiently performed. They not only examine the technical accuracy of the assessments but also deal with the general organisation of the office, the control of the Office Staff, settlement of refund claims in reasonable time and the extent to which the convenience of the public is considered in arranging for interviews and calling for books of account, etc. Though their functions are mainly extra-statutory still a penalty cannot be imposed by the Income-tax Officers without their previous approval.

(c) Commissioner—The Head of the Income-tax Department of a Province or other Area entrusted to him is the Commissioner of Income-tax who is appointed by Central Government. He is vested with power under Section 33A to revise any order passed by any Income-tax official subordinate to him. In addition Special Commissioners are appointed without reference to any Area to secure proper and uniform administration of the Income-tax Act throughout India and to detect cases of suspected fraud.

(d) Central Board of Revenue—The Board is entrusted with the general administration of the Act by issuing Executive instructions regarding the interpretation of the provisions of the Act. It is also authorised to make rules under Section 59 for carrying out the purposes of the Act. The Board has the overriding power to issue directions and instructions to all Officers of the Department except the Appellate Assistant Commissioners in the exercise of their Appellate functions.

(e) Appellate Assistant Commissioners—The functions of Appellate Assistant Commissioners are mainly to hear appeals against assessments made by the Income-tax Officers. Administratively they are directly under the control of the Central Board of Revenue.

(f) Appellate Tribunal—The functions of the Appellate Tribunals are to hear appeals on questions of fact and law against the decision of the Appellate Assistant Commissioners. The Tribunal's decisions on the questions of fact are final and conclusive but its decisions on questions of law are subject to reference to a High Court. The Tribunal is now the only authority to state a case for the opinion of High Court. The appeals are ordinarily heard by a Bench consisting of a Judicial Member and an Accountant Member having experience of accountancy and business matters.

CHAPTER II

INCOME AND ITS LIABILITY TO TAX

§1—The meaning of income and Income-tax—The law does not define what is income though it sets out certain provisions as to the particular kind of receipts which should be excluded or not in the computation of income. Consequently we have to seek guidance from Judicial pronouncements as to the nature of income liable to be taxed. It was defined by Dawson Miller, C. J. in re: Raja Jyotiprosad Singh Deo as follows:—

"Without giving an exhaustive definition it may be described as the annual or periodical yield in money or reducible to money value, arising from the use of real or personal property or from labour or services rendered bearing in mind that in some cases, e.g., income derived from house property, the yield must be taken as *bona fide* annual value and not necessarily as the actual yield."

According to the decision of the Privy Council in Commissioner of Income Tax, Bengal, *Vs.* Shaw Wallace & Co. "Income" connotes a periodical monetary return "coming in" with some sort of regularity or expected regularity from definite sources which need not be continuously productive but their object must be the production of a definite return as distinguished from a mere windfall.

Income-tax is, therefore, as its name implies, a tax on income, actual or notional, irrespective of the standard by which it is measured. The moment the amount of income is determined it attracts liability and the law is not concerned how it is ultimately disposed of. It is however a personal tax and is not a charge on the income upon which it is levied but is imposed upon a person in relation to his income.

Income which is received in India is liable to tax whether it accrues or arises inside or outside India, to a person resident or not, and whether the receipt is actual or constructive. Again income which accrues or arises within India is liable to tax whether the person is resident or not, even when the payment is effected outside India. It will be evident, therefore, that all persons irrespective of their nationality or residence are equally liable in respect of all income that has been received in or has accrued or arisen inside India. Income which accrues, arises or is received outside India is termed foreign income and its liability to tax is dealt with in the next chapter.

§2—Income excluded from total income altogether [Section 4 (3)]—Income of certain categories are treated as "No income"; as such they are not taken into account in computing the total amount of income liable to income-tax. The main heads of exempted income are considered below:—

(a) Commutation of Pension, Consolidated Compensation for death or injuries, etc.—Any sum received on account of commutation of pension or in the nature of consolidated compensation for death or injuries or in payment of an Insurance Policy or as the accumulated balance standing at the credit of a subscriber to any Provident Fund is treated

as a Capital receipt, as such it is not taxable. Payment out of Provident Funds or similar funds which are not recognised in terms of the Act are however taxable to the extent of the employers' contribution and interest thereon. Monies received under policies insuring against loss of profits are however not exempt.

(b) Casual and non-recurring income—Revenue receipts which are casual and non-recurring and do not arise from any venture or concern in the nature of trade, commerce or manufacture are exempt from taxation. Receipts may be isolated and yet may not be of a casual and non-recurring nature, as such these should be scrutinised before being taxed. Some illustrations are given below:—

(i) "A" purchases a house with a view to re-selling it at a profit. His profit from this transaction is liable to tax even although it is an isolated transaction. "B" purchases a house for his own use and later on sells it at a profit. His profit is not liable to tax.

(ii) "A" wins a prize in a lottery or a bet on the race course, his receipts therefrom are not taxable. "B" is a book-maker, as such his profit from betting is taxable.

(iii) "A" makes a practice of speculating in the purchase and sale of shares; his profit therefrom is liable to tax. "B" purchases a debenture at Rs. 95 redeemable at par after ten years. The premium received on redemption is not taxable. On the other hand the yield from Treasury Bill issued at a discount and redeemed at par after three or six months is liable to tax.

(iv) Lump sum legacies are exempt from tax but annuities granted under a Will are not exempted.

(v) A fee for refereeing at a football match would be taxable in the hands of a professional referee but not in the hands of an amateur.

(vi) Fees for giving evidence would be taxable in the hands of an expert but not in the hands of a casual spectator.

(vii) Fees for casual journalistic efforts are not taxable but fees for setting examination papers in his own subject paid to a Professor are taxable.

(c) Income of Religious & Charitable Institutions—Income from property held under Trust for religious or charitable purposes, and from business carried on by or for a charitable or religious institution including voluntary contributions received by it, is exempt from income-tax. The word "property" does not bear the restricted meaning that it bears in Section 9 of the Act but includes securities, business, or share in a business. In the case of a property in which there is no absolute dedication and in which the trust reserves a secular interest to beneficiaries, Sebaits or heirs of the founder, etc., the secular interest is assessable to income-tax.

The maintenance of a Sebait 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 Sebait 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 Sebait

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. In any case, any portion of the income dedicated under the Trust which may be misappropriated would also be assessable.

To secure exemption, the income of religious or charitable institutions or the income derived from property held for religious or charitable purposes need not be actually spent for those purposes in the year of receipt. Where the property is held in part only for religious or charitable purpose a proportionate share only of any expenses incurred on management is allowable.

Business income of a charitable or religious trust is exempt when the income is applied solely to the purposes of the institution and either the business is carried on in the course of the carrying out of the institution or the business is carried on mainly by the beneficiaries of the institution.

Income of a religious or charitable institution derived from voluntary contributions like donation, legacies and gifts is also exempted if it is applicable to religious or charitable purpose, which includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. The expression "Charitable purpose" should ordinarily apply to public charities.

(d) Income of the Local Authorities—The income of the Local Authorities was wholly exempt from income-tax until 1939, when on the recommendation of the Expert Committee this exemption was withdrawn with regard to income from a trade or business carried on by the Authority, so far as that income does not arise from the supply of a commodity or service within its own jurisdiction. A Local Authority is defined 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". Income from sale of water to other Municipalities or to shipping is liable to tax although a fair share of general administration and possibly of loan charges is allowable in computing this income.

(e) Income from interest on securities held by Provident Funds—Interest on securities which are held by or are the property of any Provident Fund to which the Provident Funds Act, 1925, applies, i.e., Government and Railway Provident Funds and Provident Funds established for the benefit of its employees by any Local Authority, etc., are exempt from tax. Income received by Trustees on behalf of a recognised Provident Fund as defined in Section 58A(a) is also exempt. Since Provident Funds are authorised to invest in any Trustee Security, the words "Interest on Securities" cannot bear the same restricted meaning as in Section 8 of the Act, but include all securities mentioned in Section 20 of the Indian Trust Act.

(f) Agricultural income—Any rent or revenue derived from land used for agricultural purposes is exempt from tax only when the land is assessed to Land Revenue by an Authority in India or is subject to a local rate assessed and collected by an Authority in India. But where the Land Revenue or local rate is paid to an Authority outside India the exemption does not apply.

Income from fisheries, markets, moorings, ferries, stone quaries, coal, manganese, mica, etc., is not agricultural income. Income from the use of land for storing purchases of crops by merchants and from land let out for making bricks is not agricultural income. Nazar paid by tenants at the beginning of the Zemindary year known as Punnyaha Nazar—a voluntary payment on an auspicious day, and Nazar paid for the recognition of succession, inheritance, etc., not in connection with the land or tenure held by the tenant are not agricultural income. Interest on cash loans made to tenants at the beginning of the cultivating season repayable in kinds at harvest time is not agricultural income.

Income from sale of catechu, Kah-charai (dues paid for grazing wild grass), Narkul Jalkar (reads growing on banks of rivers), forest timber, grass phus (thatching straw) and bhang and fruits of mango, imli (tamarind) and kathal (jack fruit) trees which have grown on land naturally and spontaneously and without the intervention of human agency is not agricultural income even if such land is assessed to land revenue, and such income is not exempt from income-tax.

Weighing charges levied by a landlord on his tenants in addition to the rent under agreements entered into with the tenants and cess collected from tenure-holders and raiyats under the Bengal Cess Act, 1880, are agricultural income and exempt from tax. Income derived from pasturage is income from land for agricultural purposes and is therefore exempt. Profit derived from sale of tobacco leaves by a Biri Manufacturer is not agricultural income but profit derived from cultivation of tendu leaves is agricultural income and exempt. Income derived form "toddy" is agricultural income in the hands of the actual cultivator whether owner or lessee of the land on which the trees is grown. Profits derived by a cultivator from the sale of the produce raised by him are exempt even if he keeps a shop for the sale of such produce, provided no process has been performed in respect of the produce other than those ordinarily employed by cultivator to render the produce fit to be taken to market. Where income is derived partly from agriculture and partly from business the following rules shall be observed:—

"Rule 23. (1) In the case of income which is partially agricultural income as defined in Section 2 and partially income chargeable to income-tax under the head "Business" in determining that part which is chargeable to income-tax the market value of any agricultural produce which has been raised by the assessee or receievd by him as rent in kind and which has been utilised as raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted, and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

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

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

(b) Where agricultural porduce is not ordinarily sold in the market in its raw state, the aggregate of—

(i) the expenses of cultivation,

(ii) the land revenue or rent paid for the area in which it was grown; and

(iii) such amount as the Income-tax Officer finds, having regard to all the circumstances in each case, to represent a reasonable rate of profit and the sale of the produce in question as agricultural produce.

"Rule 24. 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 and 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."

(g) Special Allowances, Benefit and Perquisites for expenses of Office etc.—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, is exempt from taxation. This covers motor car or entertainment allowances and travelling expenses of commercial travellers and representatives. (*Also see Appendix A*).

(h) Allowance received by a member of a Hindu Undivided Family. [Section 14 (1)]—Income received by a person under any customary or legal right, from the funds belonging to a Hindu Undivided Family as one of its members, is exempt from tax in his hands. The income is however assessable in the hands of the Family as a separate composite unit. Those members of a Hindu Undivided Family, who either on partition would be entitled to demand share or are entitled to maintenance under the Hindu Law, can only claim exemption from taxation (*Also see Chap. IV* §2.)

(i) Income from houses constructed during 1-4-46 to 31-3-52—Income from a house, the construction of which was begun and completed between 1st April 1946 and 31st March 1952, would be exempt for two years from the date of completion. The exemption applies to a complete unit of a building and not to any additions or replacements to an existing building unless the total expenditure is more than Rs. 10,000. The exemption relates to net annual value computed after allowing the deduction admissible under Section 9 which would have otherwise been chargeable.

§3—Income excluded from total income for Income-tax but included for Super-tax. (Section 15A).—For calculating income-tax "earned income allowance" is treated as "no income" and as such is excluded from the computation of total income. The concession does not however apply for calculating super-tax. For example, if the total income from business amounts to say Rs. 36,000 then income-tax should be payable on Rs. 32,000 (Rs. 36,000 less maximum allowance of Rs. 4,000) whereas super-tax should be payable on Rs. 36,000 at the rates ruling in the year of assessment. (*Also see Chap. X* §7.)

§4—Income excluded from total income for Super-tax but included for Income-tax. [Sections 55 & 14 (2)].—The amount of income which a

partner of an unregistered firm or a member of an Association of persons other than a Hindu Undivided Family or a company, is entitled to receive, in respect of which super-tax has already been paid by the firm or the Association. (*See Illustration 5.*)

§5—Income included in total income but exempt from both Income-tax and Super-tax—The following classes of income shall be exempt from income-tax and super-tax but shall be included in the total income for determining the rate of tax applicable to other taxable income.

(a) Any income, profits or gains accruing or arising to an assessee within an Indian State unless such income, profits or gains are received in or are brought into India. (*Also see Chap. III § 4.*)

(b) The profits of any Co-operative Society or the dividends and other payments received by the members of any such Society out of such profits. The profit should not however include any income from securities, properties, shares and other sources of income referred to in Section 12 of the Act.

(c) Donations amounting to more than Rs. 250 made by an assessee after 1-4-48 to any Institution or Fund established in India for charitable purposes and approved by the Central Government. The maximum limit of the donation in the case of a Company is 5% and in other cases 10% of total income as reduced by non-taxable portion. The amount of relief of tax is, however, restricted to half of the amount of donation.

§6—Income included in total income but exempt from Income-tax and not from Super-tax—The following classes of income shall be exempt from income-tax (not super-tax) but shall be included in the computation of the total income of the assessee.

(a) Interest receivable on any Rupee Security issued or declared to be income-tax free by the Government.

(b) The amount of income which a partner of an unregistered firm or a member of an Association of persons other than a Hindu Undivided Family or a Company, is entitled to receive, in respect of which the tax has already been paid by the firm or the Association.

(c) Employers' and Employees' contributions to a recognised Provident Fund up to one-sixth of the Employee's Annual salary or Rs. 6,000, whichever is less. In addition interest at any rate up to 6 per cent. credited on the accumulated balance of an employee to the extent of one-third of his salary.

(d) Any sum paid by an assessee to effect an insurance on his life or on the life of his wife or in respect of a contract for a deferred annuity on his life or on the life of his wife, and contributions to the Widows, Orphans and Old Age Contributory Pension Fund, 1925, are exempt from income-tax. The total amount exempted under (c) excluding interest and (d) shall not exceed one-sixth of the total income of the assessee (before deduction of the allowance for earned income) or Rs. 6,000, whichever is less. In the case of a Hindu Undivided Family however the limit is raised to Rs. 12,000. (*Also see Chap. V § 5.*)

(e) 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 profits on which income-tax has been charged in the hands of the payer.

§7—Income included in total income but exempt from Super-tax and not from Income-tax—The income of any Investment Trust Company which is derived from dividends paid by other Companies which have paid super-tax in respect of their profits out of which such dividends are paid, is exempt from Super-tax. The income is however included in the computation of the total income of the Investment Trust Company, and income-tax is payable by it in respect thereof.

§8—Liability to Tax—The amount of tax payable by an assessee is determined in relation to his total income. Incomes mentioned in §2 do not increase the amount of tax payable as they being treated as "no income" are not included in the computation of the total income. But incomes discussed in §5, §6 and §7, being included in the total income, increase the average rate of tax applicable to other incomes. The average rate of income-tax of Rs. 10,000 (unearned) is 13.65 pies per rupee whereas the rate on Rs. 15,000 (unearned) is 21.1 pies per rupee at the rates applicable in the fiscal year 1950-51. Consequently if interest on tax-free securities amounting to Rs. 5,000 is included in the total income, then the amount of income-tax payable on other incomes, i.e., Rs. 10,000 at 21.1 pies per rupee will be Rs. 1,099 whereas the amount of tax on Rs. 10,000 at its own rate of 13.65 pies per rupee is Rs. 710-15 only.

Illustration 1—Dr. Akinchan Adhicary had the following sources of income during the year ended 31st March 1950—(1) One-fourth share of income from the properties belonging to the undivided family amounting to Rs. 6,000, (2) Income from medical profession Rs. 15,000, (3) Half share of profit of an unregistered firm (sleeping partner) amounting to Rs. 1,750, (4) Interest on Fixed Deposit with Central Co-operative Credit Society amounting to Rs. 250.

He paid Life Insurance premium of Rs. 2,000 (Capital sum assured being Rs. 35,000). Find out the amount of Income tax payable by him.

ANSWER

Statement of income for the year ended 31st March 1950

Professional income	Rs. 15,000
Share of income from unregistered firm	1,750
Interest on Fixed Deposit	250
Total income	Rs. 17,000

Income-tax payable on Rs. 14,000 (Rs. 17,000 less earned income allowance @ 20% of Rs. 15,000) at the rates ruling in the fiscal year 1950-51—

Rs. 1,500	Nil.	Nil.
3,500 @ 9 pies per Rupee		Rs. 164 1
5,000 @ 21 ,, ,, ,,		546 14
4,000 @ 36 ,, ,, ,,		750 0
		Rs. 1,460 15
Less: Rebate in respect of Life Insurance Premium of Rs. 2,000 @ 20.035 pies per Rupee		208 12
Net Income-tax payable		Rs. 1,252 3

Note.—(1) Average rate of income-tax

$$= \frac{\text{Rs. } 1460\text{-}15}{\text{Rs. } 14000} = 20.035 \text{ pies per Rupee.}$$

(2) Interest received on Fixed Deposit with the Co-operative Society is taxable, only profits are "tax-free".

(3) Share of profit of an unregistered firm is usually "tax-free" but as no income-tax has been paid in this case (total income of the firm being below Rs. 3,600) it is taxable in the hands of Dr. Adhicary. Earned Income Allowance in respect of the share of profit of the firm has not been allowed as Dr. Adhicary was not an active partner.

(4) Share of income of a Hindu Undivided Family is treated as "No income" as such it has been excluded from the computation of total income.

CHAPTER III

FOREIGN INCOME AND SCOPE OF ITS TAXATION

§1—Assessment of foreign income—Income which accrues, arises or is received outside India is termed foreign income. The imposition of tax in respect of foreign income has necessitated the creation of a distinction between permanent residents of India and persons whose presence in India is more or less of a temporary or casual nature. Consequently in respect of certain class of assessees, i.e., non-residents, the foreign income is included in the total world income for determining the rate of tax applicable to Indian income, whereas it is not taxable in the hands of another class of assessees i.e., residents but not ordinarily residents, unless it is brought into India, lastly in respect of still another class of assessees, i.e., residents and ordinarily residents, it is taxable subject to an allowance of Rs. 4,500 if such income is not brought into India. Before the incidence of taxation between these three classes of assessees is further discussed let us examine the difference between their status.

§2—Resident but not ordinarily Resident. (Section 4A):

(a) Residence of individuals—An individual is resident in India in any year if he (i) stays in India for 182 days or more in that year; (ii) keeps a dwelling house for him for 182 days or more and stays for any time in that year; (iii) stays for a period of 365 days or more during four years preceding to that year and is present in India for any time in that year otherwise than on an occasional or casual visit, or (iv) arrives in India during the latter portion of the fiscal year but intends to stay for more than three years from the date of his arrival. An essential condition common to all the four definitions is that there must be physical presence in India even for a day in any year to constitute a person resident in that year. Consequently a person who remains outside India for the whole of the fiscal year (1st April to 31st March) cannot be a resident whatever connections he may have in India during that year.

Maintenance of a house does not necessarily mean that it should be owned by the assessee but it must be available for occupation by him at any time during the year. Maintaining a residence and setting up an establishment are different things from owning or contracting to buy an unfurnished house. The question of ownership is not at all necessary for the purpose of determining residence in as much as a tenant can also maintain a dwelling place for him. The word "resident" indicates a personal quality and is not descriptive of a person's property.

The test of determining whether a visit is casual or not is to find out if it was of an accidental or uncertain nature and if the intention of the person visiting the place was for a temporary stay with a view to reverting back to the place of his abode. It is easy to give instances of casual visits rather than to define in precise terms the essence and the nature of a casual visit. In order to determine whether a visit to India is of a casual or occasional nature, the assessee's conduct prior to the period of charge could be taken into consideration. His object and intention can be gathered from the

circumstances in which he paid the visit as well as his declarations and past conduct.

For the purpose of determining the residence of a person the 'merged States' (excluding Jammu and Kashmir) should be taken to be part of India for any of the relevant years.

(b) Residence of Hindu Undivided Families, Firms and other Associations—A Hindu Undivided Family, Firm or other Association of persons is resident in India unless the control and management of its affairs is situated wholly without India. Families, Firms or Associations will be resident in India even if any part of the control or management is situated in India. Consequently when a partner of a firm carrying on business in Ceylon resided in India and managed a branch of the firm in India it was held that the control was not situated wholly outside India and the firm was therefore resident in India.

The control and management must be *de facto* and not *de jure*. A liberal meaning is to be given to the words "wholly situated" and it must be ascertained in every case where in fact the control and management of the business is situated apart from the temporary journeyings of the active partner or the residence of the dormant ones.

One Mr. "B" carried on business in South Africa. In 1912 he returned to India leaving his business in the hands of three managers. In 1937 he executed a Deed by which he admitted the three managers as partners having a share in profits and losses but retained to himself the full control of the business and even the right to dismiss any of the three partners. Mr. "B" however stated in an Affidavit that he had not at any time either controlled and managed or attempted to control or manage the affairs of the business in South Africa. Two of the partners also filed Affidavits stating that they had been carrying on the business of the firm without receiving any instructions from Mr. "B" who only kept himself in touch just to caution the partners while they informed him about the general condition of trade prevailing in South Africa. It was held, under the circumstances, that the firm was not resident in India.

(c) Residence of Companies—A Company is resident in India in any year (i) if the control and management of its affairs is situated wholly in India in that year or (ii) if its income arising in India in that year exceeds its income arising outside India in that year. The definition shows that the country of incorporation does not determine its place of residence but it is the place of control and management that determines a Company's place of residence So if any part of the control and management is outside India then the Company would not be treated as resident in India. But the Companies who have most of their trading activities in India and earn a substantial income here would be treated as resident even though they may be registered and controlled from a foreign country.

For the purpose of the 50% income for Clause (c) of Section 4A it is only the income arising in India and not the income which may be deemed to arise in India, which has to be taken into account in determining whether a Company is resident in India. The whole of the income arising in India (including agricultural income and any other income which may be exempt from tax) has to be taken into account in determining whether more than half of the income of the Company arises in India.

§3—Resident and ordinarily Resident. (Section 4B):

(a) An individual is "Resident and ordinarily resident" in any year, i.e., accounting year if he has been resident in India in nine out of ten years of 12 calendar months preceding that year and has stayed in India for more than 730 days in last seven years of 12 calendar months preceding that year. Both these conditions are cumulative and if we fail to prove either of the conditions then we fail to establish that he is "resident and ordinarily resident". Ordinary residence is not measured by the length of technical residence alone but also by the period of physical presence during preceding seven years ; on the other hand the period of physical presence alone, however long, is not enough, there must also be technical residence for nine out of ten preceding years.

The object of taking both these factors into account is clear. Two classes of individuals were considered when the Legislature introduced the principle of taxing permanent residents, viz., those who were on the upward path of progress from foreigners to full citizens and those who were on the downward path, falling off from full citizens to foreigners. In the case of the former, merely because they come and go, and stay in India, they should not be taxed as ordinary residents. They can be taxed as such, only after they complete a period of nine years' residence. In the case of the latter, even if they have been technically residents for over nine years they should not be taxed if they have not stayed in India for more than 730 days in the preceding seven years.

Complete absence from India for two fiscal years (1st April to 31st March) will destroy the status of a "resident and ordinarily resident" until the individual completes the fresh period of nine years' residence. Complete absence for one full fiscal year in every five years would enable an individual, who has not become an ordinarily resident to keep up the status of "not ordinarily resident".

(b) A Hindu Undivided Family is ordinarily resident in India if its Manager is "ordinarily resident" in India in accordance with the principle discussed above. When the Manager of a Hindu Undivided Family dies or is replaced by another for any reason, the period of residence in India of the successive Managers of the Family during its continued existence should be taken into account in determining whether the Family is Ordinarily Resident in India or not.

(c) "Ordinary residence" with regard to a Company, Firm or other Association of persons is the same as residence, i.e., they are "ordinarily resident" if they are "resident". Consequently a Company will be "ordinarily resident" in India and taxed as such if (i) the control and management of its affairs is situated wholly in India in that year or (ii) if its income accruing in India in that year exceeds its income accruing outside India: but a firm or other Association of persons will be "ordinarily resident" unless its control and management is situated wholly without India. There is therefore much difference between the treatment accorded to the firms and companies which are entirely controlled from abroad. If more than 50% of the income of such a company accrues in India it will be treated as "ordinarily resident" but if more than 50% of the income of such firm is derived from India it will still be treated as "Not ordinarily resident".

Illustration 2—From the following particulars determine the status of Mr. Brown who arrived in India for the first time on 15th September 1930.

Date of arrival.		Date of Departure.	
15th September,	1930	30th April,	1931
15th March,	1934	30th November,	1934
1st October,	1935	31st May,	1936
15th August,	1937	31st October,	1938
1st February,	1940	30th June	1940
1st November,	1941	30th April,	1943
1st August,	1944	30th June,	1945
15th April,	1948	15th Dec.,	1949

ANSWER

Fiscal year.	No. of days stayed.	Status.	Remarks.
1930-31	198 days	Resident	More than 182 days.
1931-32	30 ,,	Non-Resident	Less than 182 days.
1932-33	Nil	,,	Absent for the whole year.
1933-34	17 ,,	,,	Less than 182 days
1934-35	244 ,,	Resident	More than 182 days.
1935-36	183 ,,	,,	,, ,, 182 days.
1936-37	61 ,,	,,	Less ,, 182 days, but more than 365 days during four years ended 31-3-36.
1937-38	229 ,,	,,	More than 182 days.
1938-39	214 ,,	,,	,, ,, 182 days.
1939-40	60 ,,	,,	Less ,, 182 days, but more than 365 days during four years ended 31-3-39.
1940-41	91 ,,	,,	Less than 182 days, but more than 365 days during four years ended 31-3-40.
1941-42	151 ,,	,,	Less than 182 days, but more than 365 days during four years ended 31-3-41.
1942-43	365 ,,	,,	More than 182 days.
1943-44	30 ,,	Resident and Ordinarily Resident	Less than 182 days, but more than 365 days during four years ended 31-3-43. Resident for 9 years out of 10 years ended 31-3-43 and stayed for more than 730 days during 7 years ended 31-3-43.
1944-45	243 ,,	,,	More than 182 days. Resident for 9 years out of 10 years ended 31-3-44 and stayed for more than 730 days during 7 years ended 31-3-44.
1945-46	91 ,,	,,	Less than 182 days, but more than 365 days during four years ended 31-3-45. Resident for 9 years out of 10 years ended 31-3-45 and stayed for more than 730 days during 7 years ended 31-3-45.
1946-47	Nil	Non-Resident	Absent for the whole year.
1947-48	Nil	,,	,, ,, ,, ,, ,,
1948-49	351 days	Resident	More than 182 days.
1949-50	259 ,,	,,	,, ,, ,, ,,

§4—Income which accrues, arises or is received in an Indian State. [Section 14(2) (C)]—As explained in Chapter II §5 (a) income which accrues, arises or is received in an Indian State is included in the total income of the assessee if he is "resident and ordinarily resident" for determining the rate of tax applicable to other taxable income, but it is not included if the assessee is "resident but not ordinarily resident" unless the income is derived from a business controlled from or profession or vocation set up in India (including Indian States). The income is however taxable if it is brought into India in the year of its accrual. Income received in India and income brought into India are not identical and their difference will be discussed later on. (*See* § 8.)

The intention of exempting this income from taxation was to avoid a loss of revenue that would arise through Double Income-tax Relief, if the Indian States also adopt residence basis of taxation. But in order to provide relief from the hardship which would be incurred if income accruing in an Indian State and once included in the total income for rate purposes in the year of accrual, were again taken into account in the year of remittance into India, the Legislature has enacted that the income shall not be taken into account for rate purposes in the year of remittance so long as it does not exceed the amount of Indian income of that year but if does exceed, then the rate of tax will be the rate applicable to the amount of the income brought into India on the supposition that it represented the total income of the assessee. (*See Illustration 33.*)

In the case of a non-resident the income is included in his total world income for determining the rate of tax applicable to his total Indian income. If the income is brought into India in the year of accrual or in any subsequent year, it is treated as "No income" and excluded from the computation of total income liable to tax in India.

As the Indian States have now merged in the Union of India, Section 14 (2) (C) will apply only to the State of Jammu and Kashmir which has specifically been excluded from the territorial jurisdiction to which the Income-tax Act now applies. The taxation laws of the 'merged States' become inoperative with effect from the assessment of the income of any previous year ending after 31st March 1948 or profits of any chargeable accounting period ending after that date, which would be assessable under the Indian Income-tax Act, 1922, as extended. The merged States taxation laws remain operative in relation to assessment of the income of the preceding periods and the assessment would be made by the corresponding authorities appointed under the Indian Taxation Laws.

§5—Income which accrues, arises or is received outside India. [Section 4 (1)]—It is taxable in the hands of an assessee who is "resident and ordinarily resident" subject to an allowance of Rs. 4,500. If the income is brought into India in the year of accrual it is taxable in full, but if it is brought in any subsequent year it should be excluded from the computation, provided it has been taxed in the year of accrual. For example, say in the fiscal year ended 31st March, 1947 an assessee's income accruing outside India was Rs. 2,500 which was brought in full in India on the 1st June, 1949. In compiling his return of income for the year ended 31st March, 1947 the amount of Rs. 2,500 should be excluded (as it is less than Rs. 4,500), but it should be included in his return of income for the year ended 31st March, 1950. Now, if the income be Rs. 7,500 then Rs. 3,000 (Rs. 7,500 less Rs. 4,500) should be included in

the return of income for the year ended 31st March, 1947 whereas Rs. 4,500 (Rs. 7,500 less Rs. 3,000 taxed in an earlier year) should be included in the return of income for the year ended 31st March, 1950.

If the assessee is "resident but not ordinarily resident" the income is excluded from the computation of total income unless it is derived from business controlled in or profession or vocation set up in India but it would be taxable if it is brought into India in the year of its accrual or in any subsequent year.

If the assessee is a "Non-Resident" the income is included in his total world income for determining the rate of tax applicable to his total Indian income. If the income is brought into India in the year of accrual or in any subsequent year it should be excluded from the computation of total income liable to tax in India.

§6—Computation of foreign income—If any tax or rate is levied or assessed in the country in which the foreign income accrues, on the basis of such income, then it will not be allowed as a deduction from the computation of the total foreign income. Foreign losses should be computed in the same manner as profits are computed and set off against income, profits and gains arising in India. But since the status of an assessee is changeable from year to year and as a consequence the world income will be taxable in certain years and Indian income or some intermediate figure in others, the question arises as to how the foreign losses should be carried forward. Of course in a year in which foreign business profits are taxable on accrual basis foreign losses are also entitled to be set off and carried forward to the next year. But if in the next year the assessee becomes non-resident the foreign business losses carried forward from the previous year cannot be set off against Indian business profits since the foreign source is not taxable in that year. The loss should be set off against profit accruing outside India within 6 years following that year. Consequently foreign losses should be set off only against foreign income accruing or arising from the same business, profession or vocation.

§7—Income which accrues, arises or is received in a country which prohibits remittance of money. (Section 45)—The laws of a country may sometimes prohibit or restrict remittance of money earned there to other countries and the necessity of giving relief to an assessee in respect of taxation of such income is obvious. Consequently if an assessee is assessed in respect of income accruing outside India in a country, the laws of which prohibit or restrict the remittance of money to India then he will not be treated as in default in respect of that part of tax which is due in respect of that amount of his income until the prohibition or restriction is removed. The assessment of such income to tax is not postponed but collection of the tax will be postponed. But the income will be treated as remitted to India if it has been or could have been utilised for expenditure incurred abroad and it will be deemed to have been brought into India if it is brought into India in any form even after it has been capitalized, e.g., if the foreign income is invested in securities abroad and then they are brought into India, there will be a constructive receipt of the income in India and as such taxable.

§8—Foreign income brought into India. [Section 4 (1)]—Income cannot be received twice by or on behalf of the same person. The word "received" means "to take in one's hand or into one's possession

something held out or offered by another, to take delivery of a thing from another, either for oneself or for a third party". Consequently the word "received" implies two persons, viz., the person who receives and the person from whom he receives. Since a person cannot receive a thing from himself the income should be treated in such case as "brought into". The receipt of an income must refer to the first occasion upon which the recipient got the money under his own control but it can then be "brought into" as many countries as he likes. An income can be received either in India or in the United Kingdom but after it has been received in India it can be remitted to Ceylon and then again to the United Kingdom. In both these countries that is, in Ceylon and United Kingdom the income would be treated as "brought into".

A sum of money may be received in more than one ways, that is, by transfer of a coin or a negotiable instrument or other document which represents and produces coin and is treated as such by business men, even a settlement in account may be equivalent to a receipt of a sum of money although no money may pass. In some instances a sum may be regarded as having been "constructively remitted" to this country, i.e., where an assessee draws a cheque on his banker abroad and cashes it here. It is impossible to define the various ways in which "a remittance" to this country can be made or to lay down exactly the circumstances in which the liability can be avoided.

Borrowing money in India is not the same as receiving income, as such if a debt due by an assessee to a Bank of India is transferred to its London Office and discharged at London by the sale of sterling securities belonging to the assessee then it cannot be said a "constructive remittance" to India of the sale proceeds of the sterling securities has taken place. But if the Bank in India allows the assessee to overdraw in anticipation of getting money from London then the overdraft should be treated as a "constructive remittance" of the sale proceeds of the sterling securities to India.

Remittance received by wife resident in India out of the income of her non resident husband which is not included in his total income liable to Indian income-tax shall be deemed to be income accruing in India to the wife and is assessable to Indian income-tax in her hands. But the Act is silent in respect of the reverse case of remittance from a wife resident abroad to a husband resident in India. [*Also see Chap. IV §1(b)*].

CHAPTER IV

CLASSIFICATION OF TAX-PAYERS (Section 3)

Income-tax is payable by every individual, Hindu Undivided Family, Company, Local Authority and by every firm and other Association of persons or the partners of the firm or members of the Association individually The liability of each class of tax-payers will now be discussed.

§1—Individual—The term "Individual" has not been defined in the Act. It means a "human being" or a single person in its ordinarily accepted sense. A minor who earns by his own skill or a person of unsound mind who carries on a business under his control is assessable as an Individual. A trustee or Administrator or Executor is also assessable as an Individual in his representative character.

In computing the total income of an individual the following kinds of income should be included: (i) Income derived by membership of wife or minor children in a firm of which the husband or father is a partner; (ii) Income from assets transferred to wife or minor children otherwise than for adequate consideration or in connection with an agreement to live apart; (iii) Income from assets transferred to third parties otherwise than for adequate consideration if the transfer was for the benefit of his wife or minor childern.

But, income derived from properties conveyed by an individual under a Deed of Trust, in pursuance of a consent decree, and payable to his wife during her lifetime for maintaining her minor children and running the household, could not be deemed to be his income although the said income would be paid back to him in the event of his surviving his wife. Again, where an individual with a view to make a provision for his wife in fulfilment of a promise made at the time of her marriage that out of his funds he would hand over to her an Estate worth Rs. 20,000 for her benefit up to her death, the income of which would be spent by her according to her wish, made an entry in his business books, it was held that the said entry was an irrevocable covenant to pay the income accruing on Rs. 20,000 to the wife and as such could not be deemed to be the income of the husband although during his wife's lifetime he would have full control over the capital and which would revert to him in the event of his surviving his wife.

(Regarding Residence—see Chap. III. §§ 2 & 3:
Rate of tax—see Chap. X § 5 and Chap. XI § 2).

(a) Dead person (Sections 24B & 49F)—An Executor, Administrator or legal representative of a deceased person should be treated as the assessee for the purpose of assessment of the income of the deceased person. The liability is however confined to the payment of tax to the extent to which the estate is capable of meeting the charge and does not rank in any way prior to other cahrges to which the estate may be liable.

When no notice has been served on a deceased person, 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 a 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. 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.

The executor, administrator, or the legal representative is similarly authorised to claim a refund of income-tax which would but for his death, have been payable to the deceased person and to appeal against the order of the Income-tax Officer who refuses to grant the refund.

(b) Married woman. [**Sections 4(2) & 16(3)**]—A married woman is liable to Income-tax in respect of any income which she earns on her own account or any income from assets inherited by her or gifted to her by any one other than her husband. The residence rules will be applied to her in her individual capacity.

Remittances received by wife resident in India out of the income of her non-resident husband, which is not included in her husband's total income liable to Indian income-tax, shall be deemed to be income accruing in India to the wife and is assessable to Indian income-tax in her hands. Income from assets transferred by a husband to his wife for adequate consideration or in connection with an agreement to live apart is taxable in the hands of the wife.

The income of a married woman living with her husband should for the purposes of assessment and collection of income-tax in the **United Kingdom,** be regarded as the income of the husband. Where she is not living with her husband she will be assessed and charged as if she were unmarried Moreover, where a married woman living in the United Kingdom is in receipt of any foreign or colonial income (excluding her husband's earned income), she should be assessed and charged as a *feme sole,* if she received the income in her own right and as the "agent" of her husband if she received it on behalf of him.

In India the wife will be taxed in respect of her income from sterling securities if she is "resident and ordinarily resident", whereas her husband will be taxed in the United Kingdom in respect of his wife's sterling income, along with his own personal income. If the wife pays income-tax in India in her own name and if the husband pays the tax in the United Kingdom in his own name it is doubtful whether any Double Income-tax Relief will be admissible, in respect of the income from the sterling securities which is apparently taxed in both the countries.

(c) Guardians, Trustees and Agents. (Section 40)—Guardians and trustees of a minor, lunatic or idiot are liable to be assessed in respect of any income which they are entitled to receive on behalf of the beneficiaries concerned. The liability to assessment is to be in the same manner and to the same extent as it would have been, had the assessment been made directly on the beneficiary. The Act however does not permit double taxation in the case of trusts once in the hands of the trsutees and again in the hands of the beneficiaries. Its inclusion in the total income may raise the rate of tax leviable on the remaining income of the beneficiary or render that income liable to super-tax but the income should not itself be subjected to income-tax or super-tax a second time in the hands of the beneficiary if it has borne income-tax and super-tax in the hands of the trustees. In determining the extent to which a beneficiary has been taxed when a part of the income of a trust has suffered taxation, his share is deemed to have been

derived proportionately from the whole income of the trust and therefore to have been taxed in the same proportion as the income of the trust has been taxed.

Any person employed by or on behalf of a person residing outside India or having any business connection with such person or through whom such person is in receipt of any income, profits or gains, which are chargeable under the Act, is liable to be assessed in the like manner and to the same amount as tax would be leviable from such non-resident. The tax may however be levied upon and recovered from the non-resident direct. The liability of the agent to pay tax is personal though he is entitled to recoup himself from the non-resident.

(d) Court of Wards, Administrator-General, Official Trustees, etc. (Section 41)—Courts of wards, Administrator-General, Official Trustees, Receivers and Managers appointed by Courts and trustees appointed under duly executed trust instrument or will, who are entitled to receive any income, profits or gains on behalf of a beneficiary, are liable to tax in the like manner and to the same amount as would be leviable upon the beneficiary and all the provisions of the Act are to apply accordingly. Where the income is not specifically receivable on behalf of any one beneficiary or where the individual shares of the beneficiaries are indeterminate or unknown the tax is leviable at the maximum rate.

It does not however prevent the direct assessment of the beneficiaries specifically on whose behalf the income is receivable or the recovery of the tax from him direct. But the income should not itself be subjected to tax a second time if it has already borne tax in the hands of the trustees.

§2—Hindu Undivided Family—The Income-tax Act does not define a Hindu Undivided Family and we have to seek guidance from the sacred books and customs of the Hindus and from judicial pronouncements. A Hindu Undivided Family is a coparcenary or tenancy in commom arising by law among certain relatives of stated degrees including relations by adoption. It cannot be created by contract among strangers or others outside the stated degree of relations.

There are two Schools of Hindu Law, the Dayabhaga and the Mitakshara—the former prevailing in the greater part of Bengal and the latter in the rest of India. The fundamental difference between the two is in their attitude towards ancestral property and the admission of females into the coparcenary under certain circumstances. Under the Dayabhaga Law a son has no right in the family property so long as his father is alive, whereas under the Mitakshara Law every male member of the family has a right in the family property as soon as he is born.

The departmental instructions in this connection are as follows:—

"The son of a Hindu (governed by any school of Hindu Law) does not acquire by birth any interest in his father's self-acquired property. In respect of the income of such property the father is to be assessed as an individual. In the case of Hindus not governed by the Dayabhaga Law the son acquires by birth an interest in his father's ancestral property and therefore after the birth of a son the income from ancestral property is to be assessed as the income of a Hindu Undivided Family. According to the Dayabhaga Law, however the son does not acquire by birth any interest in ancestral property. His rights arise for the first time on his father's death. In the father's lifetime, therefore, the income from ancestral property is to be

assessed as the income of an individual unless the father himself is a member of a coparcenary. The income of a sole surviving male member of a Hindu Undivided Family governed by the Mitakshara Law is to be assessed as his personal income if he has no son. The existence of a wife and daughters does not alter the position. Under the Dayabhaga Law the position is different. According to that law a coparcenary is formed only when the inheritance opens, and there must be two or more male heirs before a coparcenary can be formed. But if any of these male coparceners dies leaving surviving him a widow or a daughter that widow or daughter would be admitted into the coparcenary in the place of the deceased coparcener. As for example, a Hindu governed by the Dayabhaga Law dies leaving three sons A, B & C. The three sons, A, B and C, inherit the property jointly and form a coparcenary (although each inherits a defined share). If before partitioning their shares, B dies leaving a widow, BW and C dies leaving a daughter CD. then A, BW and CD will be members of the coparcenary originally formed by A, B and C. It will thus be seen that the Dayabhaga Law differs form the Mitakshara in admitting females into the coparcenary in certain circumstances although they cannot originally form a coparcenary. A coparcenary is *a fortiori* an Undivided Hindu Family and the income from the coparcenary property will, according to the Dayabhaga Law, be assessable as the income of an Undivided Hindu Family notwithstanding that such coparcenary consists of only one male member and one or more female members. The income from ancestral property of a Hindu (governed by any school of law) with no son but with a wife and/or daughters is to be assessed as the income of an individual. It would be inconsistent with the interpretation of the law of the Dayabhaga as of the law of the Mitakshara to hold that property which a man has obtained from his father belongs to a Hindu Undivided Family by reason of his having a wife and/or daughter. Indeed since under the Dayabhaga Law a son has no greater right in his father's property than that of maintenance during his minority and the father is the absolute owner of property developing upon him, even the existence of a son will not make the income of the property in the father's hands the income of an undivided family."

Basis of Taxation—For income-tax and super-tax purposes a Hindu Undivided Family is treated as a separate entity and no account is taken of how that income is distributed amongst the individual members when such individual members are assessed to income-tax and super-tax in respect of their separate income. A member of a Hindu Undivided Family cannot be called upon, in his individual capacity, to pay any further tax in respect of his share of income or to pay a higher rate of tax by including his share of the family income in his own total income. This applies even in cases where the amount of income of the family is below the taxable limit and therefore not liable to taxation in the hands of the manager of the family. Conversely a member of an Undivided Hindu Family cannot claim a refund of tax on the ground that his own total income including his share of the family income, entitles him to a lower rate of taxation than the family.

In the assessment year 1949/50 the minimum exemption limit for income-tax was raised to Rs. 5,000 for a Hindu Undivided Family having at least 2 members of more than 18 years of age, neither of whom is a lineal descendent of the other. The limit was further raised to Rs. 7,200 in the assessment year 1950/51 providing relief to a considerable number of tax-payers.

Whether the present day facts correspond to the law or not, the law assumes that the normal status of a Hindu Undivided Family is one of

jointness in residence and estate. The law also presumes that the property once joint continues as such until the contrary is proved by a member of the family who claims any advantage for the purpose of tax. If at the time of assessment it is claimed by a member that a partition has taken place among the members of the family the Income-tax Officer shall enquire thereinto and if he is satisfied, shall assess total income of the family up to the date of partition. Each member shall then in addition to any income-tax and super-tax for which he may separately be liable, be called upon to pay his share of the tax so assessed according to the portion of the family property allotted to him.

(Regarding Residence see Chap. III. §§ 2 & 3.)

Illustration 3—Ajit, Anil and Atul (all major) are members of a Hindu Undivided family having income from House Properties amounting to Rs. 18,000 (for income-tax purposes) during the year ended 31st March 1950. Ajit works in an office at a salary of Rs. 350 per month. Anil has a book shop, income from which during the year ended 31st March 1950, amounted to Rs. 2,800. Atul has no other source of income. Calculate the amount of tax payable by the family and the brothers.

ANSWER

Income-tax payable by the family—

Rs. 1,500	Nil		Nil.
3,500 @ 9 pies per Rupee		Rs.	164 1
5,000 @ 21 ,, ,,			546 14
5,000 @ 36 ,, ,,			937 8
3,000 @ 48 ,, ,,			750 0
		Rs.	2,398 7

Income-tax payable by Ajit

Salary for 12 months ended 31st March 1950	Rs.	4,200
Less: Earned income allowance @ 20%		840
	Rs.	3,360

Rs. 1,500	Nil.	Nil.
1,860 @ 9 pies per Rupee	Rs.	87 3
	Rs.	87 3

Income-tax payable by Anil will be nil as his total income is below taxable limit.

Income-tax payable by Atul will be nil as he has no other source of income.

Illustration 4—Bibhuti, Bimal and Biren major brothers of a Hindu Undivided family work in different offices at a monthly salary of Rs. 450, Rs. 375 and Rs. 225 respectively. Their income from ancestral House Properties during the year ended 31st March 1950 amounted to Rs. 6,600 for income-tax purposes. Calculate the amount of income-tax payable by the family and the brothers.

ANSWER

Income-tax payable by the family will be nil as the income from the ancestral properties is below the taxable limits.

Income-tax payable by Bibhuti—		
Salary for 12 months ended 31st March 1950		Rs. 5,400
Less: Earned Income Allowance @ 20%		1,080
		Rs. 4,320
Rs. 1,500	Nil	Nil
2,820 @ 9 pies per Rupee		Rs. 132 3
		Rs. 132 3
Income-tax payable by Bimal—		
Salary for 12 months ended 31st March 1950		Rs. 4,500
Less: Earned Income Allowance @ 20%		900
		Rs. 3,600
Rs. 1,500	Nil	Nil
2,100 @ 9 pies per Rupee		Rs. 98 7
		Rs. 98 7

Income-tax payable by Biren will be nil as his total income is below the taxable limit.

§3—Company—Under Income-tax Act a "Company" means (a) any Indian Company as defined in the Indian Companies Act 1913, the registered office of which is situate in India or (b) any Association whether incorporated or not and whether Indian or non-Indian which is declared by general or special order of the Central Board of Revenue to be a Company for the purpose of the Act.

The word "Company" has been used in the Income-tax Act in a much wider sense and includes any foreign association like the French Societies Anonyms which have many characteristics in common with the Companies recognised by the Indian Law. The rules about incorporation of Companies outside India may differ but if a Company has been duly registered in accordance with the laws of the country, it is a "Company" for the purposes of the Income-tax Act, no matter what the motives of registration were. A Company in liquidation is a "Company" within the meaning of the Income-tax Act and the Revenue Authorities can call upon the liquidator to submit a return of income and to pay the amount of tax due.

Basis of taxation—A Company is assessable to income-tax on its profits at the maximum rate irrespective of the amount of its profit. The shareholders are however entitled to get credit for the amount of income-tax payable by the Company in respect of the dividends received by them. The dividend is not exempt from taxation in the hands of the shareholders and is included in their total income.

In addition, the Companies pay a flat rate of super-tax on their entire profits. This tax is not, however, paid on behalf of the shareholders nor can it proportionately be credited to the shareholders as in the case of income-tax. Thus the shareholders have to pay an additional super-tax through the Company, in respect of the dividends receivable by them. An Investment Trust Company however is exempt form paying super-tax a second time in respect of the dividends received from other Companies which have paid super-tax in respect of the profits out of which such dividends are paid.

The super-tax payable by Companies is entirely a Federal source of Revenue and is excluded from the proceeds of income-tax which are distributed to the Provinces. Though it corresponds to Corporation tax it is not allowed in India as a deduction in computing the profits of the Company for income-tax purposes as in the case of the United Kingdom profits tax.

With a view to prevent the avoidance of the payment of super-tax through non-distribution of income of a Company, in which the public do not hold more than 25 per cent. of the voting powers allotted to the ordinary shareholders or the shares of which are not dealt with in any Stock Exchange in India, the Income-tax Officers are authorised to tax the shareholders directly in respect of their proportionate share of the income. If the Company does not distribute 60 per cent. of its assessable profits as reduced by the amount of Income-tax and Super-tax payable in respect thereof, to its shareholders the Income-tax Officer shall assume that all the profits have been distributed and shall tax the shareholders directly unless he is satisfied that having regard to the previous losses or the smallness of the profits made, the payment of a dividend or of a larger dividend would be unreasonable. Further, if the accumulation of the past profits exceed the paid up capital of the Company together with any loan capital which is the property of the shareholder, or the actual cost of the fixed assets of the Company whichever is greater, then the Income-tax Officer shall take action unless all the assessable profits of the Company are distributed in the form of dividends. In all cases however the previous approval of the Inspecting Assistant Commissioner must be taken, who, in his turn shall not give his approval without hearing the objection, if any, of the Company concerned. Where tax has been paid in respect of any undistributed profits and gains of a Company and such profits and gains are subsequently distributed in any year the proportionate share therein of any shareholder of the Company shall be excluded in computing his total income of that year. These regulations were held in abeyance in the assessment years 1944-45 and 1945-46.

(*Regarding Residence see Chap. III* §§ 2 & 3.)

§4—**A local Authority** is defined 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". It includes Improvement Trust, Inland Navigation Boards, Water Boards, etc. There cannot be any "Local Authority" outside India within the meaning of the Income-tax Act.

Income arising from a trade or business carried on by any Local Authority outside its territorial jurisdiction in respect of the supply of a commodity or service, is liable to Income-tax at the maximum rate. Income from supplying gas, electricity, water, etc., to other Municipalities is taxable, subject to a fair allowance in respect of general supervision and possibly of loan charges, if any.

Bombay Municipal Corporation supplied water outside the city to Government and other persons from the Municipal Water Works situated outside the city on property belonging to the Corporation and the supply was metered at water works. It was held that in supplying water to Government and other persons outside the limits of the city, the Corporation was carrying on a trade or business and as the income arose from the supply of a commodity or service outside its own territorial jurisdiction it was liable to tax.

§5—Firm.—The Indian Income-tax Act adopts the definitions of "Firm" "Partner" and "Partnership" given in the Indian Partnership Act, 1932 which are as follows:—

"Partnership is the relation between persons who have agreed to share the profit of a business carried on by all or any of them acting for all. Persons who have entered into 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".

Under the Indian Partnership Act a minor cannot be a member of a firm though he may be admitted, with the consent of all the other partners, to the benefits of the partnership. The Income-tax Act provides that the expression "Partner" should include any person who being a minor, has been admitted to the benefits of the partnership.

The following sections of the Indian Partnership Act should also be studied in this connection:—

"Section 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.

"Section 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 the relevant facts taken together.

"Explanation 1.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make persons partners.

"Explanation 2.—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business; and in particular, the receipt of such share or payment—(a) by a lender of money to persons engaged or about to engage in any business, (b) by a servant or agent as remuneration, (c) by the widow or child of a deceased partner, as annuity or (d) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business."

From a strict legal point of view a firm is not a legal entity but for the income-tax purposes it is a distinct unit notwithstanding the fact that the partner may also be separately assessed. It should be noted that a firm cannot legally be a partner in another firm, that no partnership can legally be constituted between a Hindu Undivided Family and a firm and that a partnership cannot be formed between the Karta of a Hindu Undivided Family in his individual capacity and the family. Although a firm as such cannot enter into a contract of partnership because it is not a legal entity there

is nothing wrong to bar the individual members of a firm from entering into partnership with other individuals or with the partners of another firm, the contract entered into by the partnership must be regarded as the contract entered into on behalf of all the partners, and that the partner firm is entitled to have its share of loss in the bigger partnership, set off against its profits.

[*Regarding Residence of firms see Chap. III* §§ 2 & 3.]

For income-tax purposes firms are divided into two categories—registered and unregistered. The main difference in their treatment is as follows:—as regards income-tax, and super-tax it is not payable by the registered firm as such, except in respect of the shares of non-resident partners, the resident partners being assessed directly in respect of their shares of income. An unregistered firm, on the other hand, is assessed like an individual and the partners are not entitled to claim refunds where their individual rate of tax is lower than that of the firm, nor are the partners taxed a second time in respect of their shares of the profits of the firm, but their shares are included in their total income for determining the rate of tax at which they should be taxed on their other income. If, however, an unregistered firm as such, pays no tax on the ground that its total income is below the taxable limit, partners are liable to pay tax on their proportionate shares along with the tax on their other income.

(a) Registration of firms—(Rules 2 to 6)—An application for registration should be made in the prescribed form available from the Income-tax office and must be signed by all the partners. The application, accompanied by an instrument of partnership in duplicate, specifying the individual shares of the partners, should be submitted along with the return of income. When an application is submitted the Income-tax Officer shall enquire into the genuineness of the firm. If there be any evidence direct or circumstantial showing the bogus nature of a so-called instrument of partnership, the Income-tax Officer may refuse registration of the firm in question. Where a partnership consists of a firm and some individuals and the deed of partnership while mentioning the proportion in which the profits and losses are to be shared between the firm and the other partners respectively, does not specify the shares of the partners of the firm which is a member of the partnership, the partnership cannot be registered. Where a partner dies and afterwards an application for registration is made without disclosing the facts of the death of the deceased partner, registration may be refused by the Income-tax Officer.

When the Income-tax Officer is satisfied as to the genuineness of the instrument of the partnership, he shall endorse the original with a certificate to the effect, that the registration has been allowed and return the deed to the assessee, the duplicate being retained as part of the assessee's record. Registration once granted, is valid up to the end of the financial year in which it is allowed but can be renewed each year by the Income-tax Officer on an application in the prescribed form accompanied by a certificate signed by all the partners to the effect that the constitution of the firm has not been changed. In the event of the consitution being changed a fresh partnership deed should be submitted. Registration may be cancelled by the Income-tax Officer if the return of income of the firm is not submitted or evidence called by him is not furnished.

An order refusing to register a firm is appealable. An order for cancellation of registration shall not be passed unless 14 day's notice has been served on the firm.

(b) Assessment of registered firms [Section 23 (5) (a)]—When the total income of a registered firm is computed it should be allocated amongst the partners in proportion to their shares in the accounting year and included in their total income. In computing the total income of a firm (registered or unregistered) any allowance payable by it in respect of salary, commission, interest, or other remuneration to any of its partners should be excluded. Consequently the word "Share" means a partner's portion of the net profit or loss, as the case may, be, increased or decreased by any sums payable to him by the firm as salary, interest, commission or other remuneration. The partners are then directly assessed in respect of their total income and the amount of tax is recovered from them. As the tax is not payable by the firm on its own behalf the amount of earned income allowance is admissible to its active partners. If, however, any of the partners be non-resident, his share of profits is assessed on, and tax payable, by the firm at the rate applicable to his total world income including the share of the firm's profit in question after adjustment of earned income allowance admissible in respect thereof. Where, in computing the foreign income of a registered firm the statutory allowance of Rs. 4,500 has been allowed, the rebate cannot again be claimed by a partner in respect of his share of income at the time of his own assessment.

Where there has been a change in the constitution of a firm or it has been newly constituted, the assessment should be made on the firm as it is constituted on the date of assessment and the partners who are entitled to receive the profits of the previous year should be assessed in respect of their proportionate share of profits. Consequently, the total income of the firm should be allocated amongst those who were partners in the previous year (i.e., the Accounting year) in proportion to their shares in such previous year. If, for any reason, the tax thus assessed on any partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.

In computing the total income of the firm, losses under one head can be set off against profits from any other head. In the event of a loss still remaining, it shall be apportioned among the partners who were entitled to share the profits and losses of the firm in the accounting year in the proportion in which they were entitled to share profits and losses and should, under no circumstances, be carried forward to be set off against the income of the firm itself in the following year. Where a previous partner has given up his share in a firm owing to a change in the constitution or is dead, only his successor by inheritance is entitled to carry forward losses allocated to him by the firm. No other persons including his successor in the firm, can claim to set off the loss against his income.

(c) Assessment of unregistered firm [Section 23 (5) (b)]—The method of assessment of an unregistered firm differs from that of a registered firm in that it is made on the firm direct in the same manner as an individual, on its total income and the amount of tax after adjustment of earned income allowance levied at the appropriate rate is recoverable from it direct. Each partner's share (as explained previously) is then included in his total income for determining the rate of tax applicable to his other income but he is not taxed a second time in respect of his share of the profits of the firm. If, however, the total income of the firm is below the taxable limit and no tax is paid by it then the partners will be liable to pay tax in respect of their proportionate shares after adjustment of earned income allowance admissible

in respect thereof. The share of income to be included in the total income should be determined with reference to the total income of the firm and not the income as reduced by the earned income allowance allowed to the firm.

Where the total income of the partners is much higher than that of the firm, it is advantageous for the partners to keep the firm unregistered. In order to put an end to this practice the Income-tax Officers are authorised to treat the firm as registered one and make the assessment on the partners directly, if in his opinion the treatment as a registered firm would be to the benefit of the Government. The option is one-sided and while the firm cannot claim to be treated as registered except by registering itself, the Income-tax Officer can, at his option, treat it as registered if it would be more advantageous to the Revenue.

In the case of an unregistered firm, losses can be set off only against the profits of the firm and not against the income of any of the partners of the firm. In the event of a business loss still remaining, it shall be carried forward to be set off against the business income of the firm itself in the following year. In the case of an unregistered firm, treated by the Income-tax Officer as a registered one and assessed as such, losses can be carried forward and set off in the same manner as a registered firm.

Illustration 5—Debabrata, Dhononjoy and Durgadas have been actively carrying on business in partnership as wholesale hardware dealers and sharing profits in the proportion of 7/15, 5/15 and 3/15 respectively. Net profit of the firm for the year ended 31st March 1949 amounted to Rs. 30,000 after charging partners' salary of Rs. 4,800 (Debabrata Rs. 2,400 and Dhononjoy Rs. 2,400) and interest on Capital of Rs. 5,200 (Debabrata Rs. 1,800 Dhononjoy Rs. 1,400 and Durgadas Rs. 2,000). Private income of the partners—Debabrata Rs. 16,800 from professional fees, Dhononjoy Rs. 31,200 from cloth business, Durgadas sustained a loss of Rs. 5,600 in grain trade. Calculate the amount of tax payable by the partners if the firm is a registered one and also by the firm and its partners if it is an unregistered one.

ANSWER

Computation of total income of the firm for the year ended 31st March 1949.

Profit allocated to partners—			
Debabrata	Rs.	14,000	
Dhononjoy		10,000	
Durgadas		6,000	Rs. 30,000
Add: Salary paid to partners—			
Debabrata	Rs.	2,400	
Dhononjoy		2,400	4,800
Interest paid to partners—			
Debabrata	Rs.	1,800	
Dhononjoy		1,400	
Durgadas		2,000	5,200
Total income of the firm for Income-tax purposes			Rs. 40,000

Allocation to partners—

	Debabrata.	Dhononjoy.	Durgadas.	Total.
Salary	Rs. 2,400	Rs. 2,400	Rs. —	Rs. 4,800
Interest	1,800	1,400	2,000	5,200
Balance	14,000	10,000	6,000	30,000
	Rs. 18,200	Rs. 13,800	Rs. 8,000	Rs. 40,000

(1) If the firm is registered, the amount of tax payable by the partners will be as follows:—

Debabrata—Share of the firm		Rs. 18,200
Private income (Earned)		16,800
	Total Income	Rs. 35,000

Income-tax payable on Rs. 31,000 (Rs. 35,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1949-50

Rs. 1,500	Nil	Nil
3,500 @ 9 pies per Rupee		Rs. 164 1
5,000 @ 21 ,, ,,		546 14
5,000 @ 42 ,, ,,		1,093 12
16,000 @ 60 ,, ,,		5,000 0
		Rs. 6,804 11

Super-tax payable on Rs. 35,000 at "wholly earned income" rates ruling in the fiscal year 1949-50.

Rs. 25,000 Nil	Nil
10,000 (@ -/2/- per Rupee	Rs. 1,250 0
	Rs. 1,250 0

Dhononjoy—Share of the firm		Rs. 13,800
Private income (Earned)		31,200
	Total income	Rs. 45,000

Income-tax payable on Rs. 41,000 (Rs. 45,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1949-50

Rs. 1,500	Nil	Nil
3,500 @ 9 pies per Rupee		Rs. 164 1
5,000 @ 21 ,, ,,		546 14
5,000 @ 42 ,, ,,		1,093 12
26,000 @ 60 ,, ,,		8,125 0
		Rs. 9,929 11

Super-tax payable on Rs. 45,000 at "wholly earned income" rates ruling in the fiscal year 1949-50

Rs. 25,000	Nil	Nil
15,000 @ -/2/-	per Rupee	Rs. 1,875 0
5,000 @ -/3/-	,,	937 8
		Rs. 2,812 8

Durgadas—Share of the firm	Rs. 8,000
Loss in grain trade	5,600
Total Income	Rs. 2,400

As the total income is less than the taxable limit, Durgadas will not be liable to pay any tax.

(2) If the firm is unregistered, the amount of tax payable by the firm and its partners will be as follows:—

Total income of the firm Rs. 40,000

Income-tax payable on Rs. 36,000 (Rs 40,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil	Nil
3,500 @ 9	pies per Rupee	Rs. 164 1
5,000 @ 21	,, ,,	546 14
5,000 @ 42	,, ,,	1,093 12
21,000 @ 60	,, ,,	6,562 8
		Rs. 8,367 3

Super-tax payable on Rs. 40,000 at "wholly earned income" rates ruling in the fiscal year 1949-50.

Rs. 25,000	Nil	Nil
15,000 @ -/2/-	per Rupee	Rs. 1,875 0
		Rs. 1,875 0

Debabrata—Share of the firm	Rs. 18,200
Private income (Earned)	16,800
Total income	Rs. 35,000

Income-tax payable on Rs. 31,640 (Rs. 35,000 less earned income allowance @ 20% of Rs. 16,800 i.e. Rs. 3,360) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil	Nil
3,500 @ 9	pies per Rupee	Rs. 164 1
5,000 @ 21	,, ,,	546 14
5,000 @ 42	,, ,,	1,093 12
16,640 @ 60	,, ,,	5,200 0
		Rs. 7,004 11

$$\text{Average rate of Income-tax} = \frac{\text{Rs. } 7004\text{-}11}{\text{Rs. } 31{,}640\text{-}} = 42.506 \text{ pies per Rupee.}$$

As the share of the firm has already been subjected to Income-tax, the amount of income-tax payable by Debabrata on Rs. 13,440 (Rs. 16,800 less earned income allowance of Rs. 3,360) at 42,506 pies per Rupee will be Rs. 2,975·7.

As the share of the firm has already been subjected to Super-tax, it should be excluded from the computation of Debabrata's income for calculating super-tax payable by him. So Debabrata will not be liable to pay any super-tax on his private income as it is less than Rs. 25,000.

Dhononjoy—Share of the firm		Rs. 13,800
Private income (Earned)		31,200
	Total income	Rs. 45,000

Income-tax payable on Rs. 41,000 (Rs. 45,000 less earned income allowance @ 20% of 31,200 i.e. Rs. 6,240 but limited to Rs. 4,000) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs.	164 1
5,000 @ 21 ,, ,,			546 14
5,000 @ 42 ,, ,,			1,093 12
26,000 @ 60 ,, ,,			8,125 0
		Rs.	9,929 11

$$\text{Average rate of Income-tax} = \frac{\text{Rs. } 9{,}929\text{-}11}{\text{Rs. } 41{,}000} = 46.5 \text{ pies per Rupee.}$$

As the share of the firm has already been subjected to Income-tax, the amount of income-tax payable by Dhononjoy on Rs. 27,200 (Rs. 31,200 less earned income allowance of Rs. 4,000) at 46.5 pies per Rupee will be Rs. 6,587-8

As the share of the firm has already been subjected to Super-tax, it should be excluded from the computation of Dhononjoy's total income for calculating super-tax payable by him. So Dhononjoy will be liable to pay super-tax on Rs. 31,200 at "wholly earned income" rates ruling in the fiscal year 1949-50 as follows:—

Rs. 25,000	Nil	Nil
6,120 @ -/2/- per Rupee	Rs.	765 0
	Rs.	765 0

Durgadas—Share of the firm	Rs.	8,000
Loss in grain trade		5,600
Total income	Rs.	2,400
Tax payable		Nil

Note—Where tax has been paid by an unregistered firm, its share of income in the hands of the partners is treated as "unearned" income.

Illustration 6—Amar, Bagala and Chandi are active partners in a firm, the net profit of which for the year ended 31st March 1950 amounted to Rs. 10,000. The partnership deed provides for payment of salaries of Rs. 5,000 to Amar and Rs. 4,000 to Bagala, and of interest on capital of Rs. 1,000 to Amar, Rs. 1,500 to Bagala and Rs. 2,000 to Chandi, the balance of the profit or loss being divisible in the proportion of 10% to Amar, 10% to Bagala and 80% to Chandi. Compute the amount of tax payable by the partners if the firm is a registered one and also by the firm and its patrners if it is an unregistered one. The private unearned income of the partners is as follows:—Amar Rs. 4,000, Bagala Rs. 6,000 and Chandi Rs. 20,000.

ANSWER

Computation of total income of the firm for the year ended 31st March 1950.

Net profit for the year allocated to the partners—			
Amar	Rs. 1,000		
Bagala	1,000		
Chandi	8,000		Rs. 10,000
Add: Salary paid to the partners—			
Amar	Rs. 5,000		
Bagala	4,000	Rs. 9,000	
Interest paid to the partners—			
Amar	Rs. 1,000		
Bagala	1,500		
Chandi	2,000	4,500	Rs. 13,500
Total income of the firm for Income-tax purposes			Rs. 23,500

Allocation to partners—

	Amar.	Bagala.	Chandi.	Total.
Salary	Rs. 5,000	Rs. 4,000	Rs. —	Rs. 9,000
Interest	1,000	1,500	2,000	4,500
Balance	1,000	1,000	8,000	10,000
	Rs. 7,000	Rs. 6,500	Rs. 10,000	Rs. 23,500

(1) If the firm is registered, the amount of tax payable by the partners will be as follows:—

Amar—Share of the firm	Rs.	7,000
Private income (unearned)		4,000
Total Income	Rs.	11,000

Income-tax payable on Rs. 9,600 (Rs. 11,000 less earned income allowance @ 20% of Rs. 7,000 i.e. Rs. 1,400) at the rates ruling in the fiscal year 1950-51

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs.	164 1
4,000 @ 21 ,, ,,			503 2
		Rs.	667 3

Bagala—Share of the firm	Rs.	6,500
Private income (unearned)		6,000
Total Income	Rs.	12,500

Income-tax payable on Rs. 11,200 (Rs. 12,500 less earned income allowance @ 20% of Rs. 6,500 i.e. Rs. 1,300) at the rates in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs.	164 1
5,000 @ 21 ,, ,,			546 14
1,200 @ 36 ,, ,,			225 0
		Rs.	935 15

Chandi—Share of the firm	Rs.	10,000
Private income (unearned)		20,000
Total Income	Rs.	30,000

Income-tax payable on Rs. 28,000 (Rs. 30,000 less earned income allowance @ 20% of Rs. 10,000 i.e. Rs. 2,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs.	164 1
5,000 @ 21 ,, ,,			546 14
5,000 @ 36 ,, ,,			937 8
13,000 @ 48 ,, ,,			3,250 0
		Rs.	4,898 7

Super-tax payable on Rs. 30,000 at the rates ruling in the fiscal year 1950-51.

Rs. 25,000	Nil		Nil
5,000 @ -/3/- per Rupee		Rs.	937 8
		Rs.	937 8

(2) If the firm is unregistered, the amount of tax payable by the firm and its partners will be as follows:—

Total income of the firm	Rs.	23,500

Income-tax payable on Rs. 19,500 (Rs. 23,500 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs.	164 1
5,000 @ 21 ,, ,,			546 14
5,000 @ 36 ,, ,,			937 8
4,500 @ 48 ,, ,,			1,125 0
		Rs.	2,773 7

Amar—Share of the firm	Rs.	7,000
Private income (unearned)		4,000
Total Income	Rs.	11,000

Income-tax payable on Rs. 11,000 at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs.	164 1
5,000 @ 21 ,, ,,			546 14
1,000 @ 36 ,, ,,			187 8
		Rs.	898 7

Average rate of Income-tax = $\frac{\text{Rs. } 898\text{-}7}{\text{Rs. } 11{,}000}$ = 15.68 pies per Rupee.

As the share of the firm has already been taxed, the amount of income-tax payable by Amar on Rs. 4,000 @ 15.68 pies per Rupee will be Rs. 326-11.

Bagala—Share of the firm	Rs.	6,500
Private income (unearned)		6,000
Total Income	Rs.	12,500

Income-tax payable on Rs. 12,500 at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies	per Rupee	Rs.	164 1
5,000 @ 21 ,,	,,		546 14
2,500 @ 36 ,,	,,		468 12
		Rs.	1,179 11

Average rate of Income-tax $= \frac{\text{Rs. } 1,179\text{-}11}{\text{Rs. } 12,500} = 18.12$ pies per Rupee.

As the share of the firm has already been taxed, the amount of income-tax payable by Bagala on Rs. 6,000 @ 18.12 pies per Rupees will be Rs. 566-4.

Chandi—Share of the firm	Rs.	10,000
Private income (unearned)		20,000
Total Income	Rs.	30,000

Income-tax payable on Rs. 30,000 at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies	per Rupee	Rs.	164 1
5,000 @ 21 ,,	,,		546 14
5,000 @ 36 ,,	,,		937 8
15,000 @ 48 ,,	,,		3,750 0
		Rs.	5,398 7

Average rate of Income-tax $= \frac{\text{Rs. } 5398\text{-}7}{\text{Rs. } 30,000} = 34.55$ pies per Rupee.

As the share of the firm has already been taxed, the amount of income-tax payable by Chandi on Rs. 20,000 @ 34.55 pies per Rupee will be Rs. 3,599.

Super-tax payable on Rs. 30,000 at the rates ruling in the fiscal year 1950-51.

Rs. 25,000	Nil.		Nil
5,000 @ -/3/-	per Rupee	Rs.	937 8
		Rs.	937 8

As the firm has not paid any Super-tax, Chandi is liable to pay Super-tax in respect of his share of the firm in addition to his private income.

Illustration 7—Diptish, Fatick and Hemanta are partners in a firm of cloth dealers, the net loss of which for the year ended 31st March 1950 amounted to Rs. 20,000. The following amounts were passed through the Accounts— Salary paid to Diptish and Fatick Rs. 3,000 each; interest on

capital paid to Diptish Rs. 3,000, to Fatick Rs. 2,500 and to Hemanta Rs. 2,000. The balance of the Profit or Loss being divisible in the proportion Diptish 50%, Fatick 35% and Hemanta 15%. Compute the amount of tax payable by the partners if the firm is a registered one and also by the firm and its partners if it is an unregistered one. The private income of the partners is as follows:—Diptish Rs. 12,000 from professional fees, Fatick Rs. 1,000 from a stationary shop and Hemanta Rs. 10,500 from hardware business.

ANSWER

Computation of total income of the firm for the year ended 31st March 1950.

Net loss for the year allocated to the partners—			
Diptish	Rs. 10,000		
Fatick	7,000		
Hemanta	3,000		Rs. 20,000
Less: Salary paid to partners—			
Diptish	Rs 3,000		
Fatick	3,000	Rs. 6,000	
Interest paid to partners—			
Diptish	Rs. 3,000		
Fatick	2,500		
Hemanta	2,000	7,500	13,500
Total loss of the firm for Income-tax purposes			Rs. 6,500

Allocation to partners-

	Diptish.	Fatick.	Hemanta.	Total.
Salary	Rs. 3,000	Rs. 3,000	Rs ——	Rs. 6,000
Interest	3,000	2,500	2,000	7,500
Balance	10,000 Loss	7,000 Loss	3,000 Loss	20,000 Loss
	Rs. 4,000 Loss	Rs. 1,500 Loss	Rs. 1,000 Loss	Rs. 6,500 Loss

(1) If the firm is registered, the amount of tax payable by the partners will be as follows:—

Diptish—Share of the firm	Rs.	4,000 Loss
Private income (earned)		12,000
Total Income	Rs.	8,000

Income-tax payable on Rs. 6,400 (Rs. 8,000 less earned income allowance of Rs. 1,600) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil
3,500 @ 9 pies per Rupee	Rs.	164 1
1,400 @ 21 ,, ,,		153 2
	Rs.	317 3

Fatick—Share of the firm	Rs. 1,500	Loss
Private income (earned)	1,000	
Total Income	Rs. 500	Loss

Fatick will be allowed to carry forward this loss of Rs. 500 for adjustment against his income from the firm in subsequent years.

Hemanta—Share of the firm	Rs. 1,000	Loss
Private income (earned)	10,500	
Total Income	Rs. 9,500	

Income-tax payable on Rs. 7,600 (Rs. 9,500 less earned income allowance of Rs. 1,900) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil
3,500 @ 9 pies per Rupee	Rs. 164	1
2,600 @ 21 ,, ,,	284	6
	Rs. 448	7

(2) If the firm is unregistered, the amount of income-tax payable by the firm will be nil and it will be allowed to carry forward the amount of loss of Rs. 6,500 for adjustment against its income of the subsequent years. The partners will not be allowed to apportion this loss amongst themselves and they will be taxed on their private income at appropriate rates.

Diptish will pay income-tax on Rs. 9,600 (Rs. 12,000 less earned income allowance of Rs. 2,400) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil
3,500 @ 9 pies per Rupee	Rs. 164	1
4,600 @ 21 ,, ,,	503	2
	Rs. 667	3

Fatick will not be liable to pay any income-tax, as his total income will amount to Rs. 1,000 only.

Hemanta will pay income-tax on Rs. 8,400 (Rs. 10,500 less earned income allowance of Rs. 2,100) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil
3,500 @ 9 pies per Rupee	Rs. 164	1
3,400 @ 21 ,, ,,	371	14
	Rs. 535	15

Illustration 8—Indu, Jiban and Kali share profits in the proportion of ½, ¼ and ¼ respectively. Kali ceased to be a partner on 1st October 1949 and the other partners continued the business without changing their proportion of sharing profits. Net profit of the firm for the year ended 31st March 1950 amounted to Rs. 20,000 after charging salary of Rs. 3,600 to Indu,

Rs. 3,000 to Jiban and Rs. 1,500 to Kali and interest on capital of Rs. 1,400 to Indu, Rs. 1,000 to Jiban and Rs. 500 to Kali. Compute the amount of tax payable by the partners if the firm is registered. The private unearned income of the partners is as follows:—Indu Rs. 22,000, Jiban Rs. 14,000, Kali—Nil.

ANSWER

Computation of total income of the firm for the year ended 31st March 1950.

Net profit for the year allocated to the partners—				
Indu	7/12	Rs. 14,000		
Jiban	7/24	7,000		
Kali	1/8	3,000	Rs	24,000
Add: Salary paid to partners—				
Indu		Rs. 3,600		
Jiban		3,000		
Kali		1,500		8,100
Interest paid to partners—				
Indu		Rs. 1,400		
Jiban		2,000		
Kali		500		2,900
Total income of the firm for Income-tax purposes			Rs.	35,000

Allocation to partners—

	Profits.	Salary.	Interest	Total.
Indu—(1/2 of 1/2 plus 2/3 of 1/2)	Rs. 14,000	Rs. 3,600	Rs 1,400	Rs 10,000
Jiban—(1/4 of 1/2 plus 1/3 of 1/2)	7,000	3,000	1,000	11,000
Kali—(1/4 of 1/2)	3,000	1,500	500	5,000
	Rs. 24,000	Rs. 8,100	Rs. 2,900	Rs. 35,000

Indu—Share of the firm	Rs.	19,000
Private income (unearned)		22,000
Total Income	Rs.	41,000

Income-tax payable on Rs. 37,200 (Rs. 41,000 less earned income allowance @ 20% of Rs. 19,000 i.e. Rs. 3,800) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies	per Rupee	Rs.	164 1
5,000 @ 21	,, ,,		546 14
5,000 @ 36	,, ,,		937 8
22,200 @ 48	,, ,,		5,550 0
		Rs.	7,198 7

Super-tax payable on Rs. 41,000 at the rates ruling in the fiscal year 1950-51.

Rs. 25,000	Nil		Nil
15,000 @ -/3/-	per Rupee	Rs.	2,812 8
1,000 @ -/4/-	,,		250 0
		Rs.	3,062 8

Jibon—Share of the firm	Rs.	11,000
Private income (unearned)		14,000
Total income	Rs.	25,000

Income-tax payable on Rs. 22,800 (Rs. 25,000 less earned income allowance @ 20% of Rs. 11,000 i.e. Rs. 2,200) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9	pies per Rupee	Rs.	164 1
5,000 @ 21	,, ,,		546 14
5,000 @ 36	,, ,,		937 8
7,800 @ 48	,, ,,		1,950 0
		Rs.	3,598 7

Kali—Share of the firm	Rs.	5,000
Total income	Rs.	5,000

Income-tax payable on Rs. 4,000 (Rs. 5,000 less earned income allowance @ 20% of Rs. 5,000 i.e. Rs. 1,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
2,500 @	9 pies per Rupee	Rs.	117 3
		Rs.	117 3

Illustration 9—Lakshmi, Manick and Narayan are active partners in a firm, the net profit of which for the year ended 31st March 1950 amounted to Rs. 20,000. The partnership deed provides for payment of salaries of Rs. 6,000 to Lakshmi, Rs. 4,500 to Manick and of interest on capital of Rs. 1,000 to Lakshmi, Rs. 1,500 to Manick and Rs. 2,000 to Narayan, the balance being divisible in the proportion of 20%, 20% and 60% respectively. Determine whether it is advantageous for the Revenue Authorities to assess the firm as registered or unregistered. The private income of the partners is as follows:—Lakshmi Rs. 28,000 from cloth business, Manick Rs. 15,000 from wine business and Narayan Rs. 40,000 from professional fees.

ANSWER

Computation of total income of the firm for the year ended 31st March 1950.

Net profit allocated to the partners—		
Lakshmi	Rs. 4,000	
Manick	4,000	
Narayan	12,000	Rs. 20,000
Add: Salary paid to the partners—		
Lakshmi	Rs. 6,000	
Manick	4,500	10,500
Interest paid to the partners—		
Lakshmi	Rs. 1,000	
Manick	1,500	
Narayan	2,000	4,500
Total income of the firm for Income-tax purposes		Rs. 35,000

Allocation to partners—

	Profit.	Salary.	Interest.	Total.
Lakshmi	Rs. 4,000	Rs. 6,000	Rs. 1,000	Rs. 11,000
Manick	4,000	4,500	1,500	10,000
Narayan	12,000	—	2,000	14,000
	Rs. 20,000	Rs. 10,500	Rs. 4,500	Rs. 35,000

(1) If the firm is registered, the amount of tax payable by the partners will be as follows;—

Lakshmi—Share of the firm	Rs. 11,000
Private income (earned)	28,000
Total Income	Rs. 39,000

Income-tax payable on Rs. 35,000 (Rs. 39,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil
3,500 @ 9 pies per Rupee	Rs	164 1
5,000 @ 21 ,, ,,		546 14
5,000 @ 36 ,, ,,		937 8
20,000 @ 48 ,, ,,		5,000 0
	Rs.	6,648 7

Super-tax payable on Rs. 39,000 at the rates ruling in the fiscal year 1950-51 .

Rs 25,000	Nil	Nil
14,000 @ -/3/- per Rupee	Rs.	2,625
	Rs.	2,625

Manick—Share of the firm	Rs. 10,000
Private income (earned)	15,000
Total Income	Rs. 25,000

Income-tax payable on Rs. 21,000 (Rs. 25,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs	164 1
5,000 @ 21 ,, ,,			546 14
5,000 @ 36 ,, ,,			937 8
6,000 @ 48 ,, ,,			1,500 0
		Rs.	3,148 7

Narayan—Share of the firm	Rs 14,000
Private income (earned)	40,000
Total Income	Rs. 54,000

Income tax payable on Rs. 50,000 (Rs. 54,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs	164 1
5,000 @ 21 ,, ,,			546 14
5,000 @ 36 ,, ,,			937 8
35,000 @ 48 ,, ,,			8,750 0
		Rs.	10,398 7

Super-tax payable on Rs. 54,000 at the rates ruling in the fiscal year 1950-51.

Rs. 25,000	Nil		Nil
15,000 @ -/3/- per Rupee		Rs.	2,812 8
14,000 @ -/4/- ,,			3,500 0
		Rs.	6,312 8

Amount payable by Lakshmi	Rs.	6,648 7	I/Tax
		2,625 0	S/Tax
Manick		3,148 7	I/Tax
Narayan		10,398 7	I/Tax
		6,312 8	S/Tax
	Rs.	29,132 13	

(2) If the firm is unregistered, the amount of tax payable by the firm and its partners will be as follows:—

Total income of the firm Rs. 35,000

Income-tax payable on Rs. 31,000 (Rs. 35,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500	@ 9 pies per Rupee	Rs.	164 1
5,000	@ 21 ,, ,,		546 14
5,000	@ 36 ,, ,,		937 8
16,000	@ 48 ,, ,,		4,000 0
		Rs.	5,648 7

Super-tax payable on Rs. 35,000 at the rates ruling in the fiscal year 1950-51.

Rs. 25,000	Nil		Nil
10,000	@ -/3/- per Rupee	Rs.	1,875 0
		Rs.	1,875 0

Lakshmi—Share of the firm	Rs.	11,000
Private income (earned)		28,000
Total Income	Rs.	39,000

Income-tax payable on Rs. 35,000 (Rs. 39,000 less earned income allowance (@ 20% of Rs. 28,000 i.e. Rs. 5,600 but limited to Rs. 4,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500	@ 9 pies per Rupee	Rs.	164 1
5,000	@ 21 ,, ,,		546 14
5,000	@ 36 ,, ,,		937 8
20,000	@ 48 ,, ,,		5,000 0
		Rs.	6,648 7

Average rate of Income-tax $= \frac{\text{Rs } 66.48.7}{\text{Rs. } 35,000} = 36.471$ per Rupee.

As the share of the firm has already been subjected to Income-tax, the amount of income-tax payable by Lakshmi on Rs. 24,000 (Rs. 28,000 less earned income allowance of Rs. 4,000) at 36.471 pies pre Rupee will be Rs. 4,558-14.

As the share of the firm has already been subjected to Super-tax, it should be excluded from the computation of Lakshmi's total income for calculating super-tax payable by him. So Lakshmi's will be liable to pay super-tax on Rs. 28,000 at the rates ruling in the fiscal year 1950-51 as follows:—

Rs. 25,000	Nil		Nil
3,000	@ -/3/- per Rupee	Rs.	562 8
		Rs.	562 8

Manick—Share of the firm	Rs. 10,000
Private income (earned)	15,000
Total Income	Rs. 25,000

Income-tax payable on Rs. 22,000 (Rs. 25,000 less earned income allowance @ 20% of Rs. 15,000 i.e. Rs. 3,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500	@ 9 pies per Rupee	Rs.	164 1
5,000	@ 21 ,, ,,		546 14
5,000	@ 36 ,, ,,		937 8
7,000	@ 48 ,, ,,		1,750 0
		Rs.	3,398 7

Average rate of Income-tax = $\frac{\text{Rs. } 3,398\text{-}7}{\text{Rs. } 22,000}$ = 29 66 pies per Rupee

As the share of the firm has already been subjected to Income-tax, the amount of income-tax payable by Manick on Rs. 12,000 (Rs 15,000 less earned income allowance of Rs. 3,000) at 29.66 pies per Rupee will be Rs. 1853-12-.

Narayan—Share of the firm	Rs. 14,000
Private income (earned)	40,000
Total income	Rs. 54,000

Income-tax payable on Rs. 50,000 (Rs. 54,000 less earned income allowance @ 20% of Rs. 40,000 i.e. Rs. 8,000 but limited to Rs 4,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil
3,500	@ 9 pies per Rupee	Rs.	164 1
5,000	@ 21 ,, ,,		546 14
5,000	@ 36 ,, ,,		937 8
35,000	@ 48 ,, ,,		8,750 0
		Rs.	10,398 7

Average rate of Income-tax = $\frac{\text{Rs. } 10,398\text{-}7}{\text{Rs. } 50,000}$ = 39.93 pies per Rupee.

As the share of the firm has already been subjected to Income-tax, the amount of income-tax payable by Narayan on Rs. 36,000 (Rs. 40,000 less earned income allowance of Rs. 4,000) at 39.93 pies per Rupee will be Rs. 7,486-14.

As the share of the firm has already been subjected to Super-tax, it should be excluded from the computation of Narayan's total income for calculating

super-tax on Rs. 40,000 at the rates ruling in the fiscal year 1950-51, as follows:—

Rs. 25,000	Nil		Nil
15,000 @ ·/3/- per Rupee		Rs.	2,812 8
		Rs.	2,812 8

Amount payable by the firm	Rs.	5,048	7	I/Tax
		1,875	0	S/Tax
Lakshmi		4,558	14	S/Tax
		562	8	S/Tax
Manick		1,853	12	I/Tax
Narayan		7,486	14	I/Tax
		2,812	8	S/Tax
	Rs.	24,797	15	

The firm will be assessed as a "Registered Firm" as the amount of tax payable in that case will be higher.

§6—Association of persons—The expression means associations or bodies of individuals, companies, firms, and other bodies of individuals whether incorporated or not, the common generic qualities being joint interest and the right to sue and the liability to be sued as an association. When the resources of a number of individuals are pooled together and one business is carried on by the combined resources, then the unit is assessed as an association of persons, even if some of the individuals are minors and the business is carried on by their guardians. The expression includes Co-owners, Chambers of Commerce, Clubs, Co-operative Societies, Mutual Benefit Societies, Mutual Insurance Companies etc.

An association of persons is assessed in the same manner as an individual on its total income and the amount of tax levied at the appropriate rate is recoverable from the association direct. Members of an "Association of persons" are exempt from tax a second time, in their hands, of their share of profits receivable by them if the profits have been taxed in the hands of the association. Their shares are of course included in their total income for determining the rate of tax at which they should be taxed in respect of their other income. Similarly, they cannot claim a refund where their individual rate of tax is lower than that of the association. Where however the association does not pay any tax on the ground that its total income is below the taxable limit, the members are liable to pay tax on their proportionate shares along with the amount of tax payable in respect of their other income.

(*Regarding Residence see Chap. III §§ 2 & 3*)

(a) Co-owners—There was much conflict of judicial opinion as to whether Co-owners of properties are to be assessed as separate individuals or as an association of individuals. The conflict has since been remedied and the law at the moment stands as follows:—

"Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons but the share of each such person in the income from the property.. .. ..shall be included in his total income."

(b) Chambers of Commerce—The income of a Chamber of Commerce from admission fees and annual subscriptions of members are not taxable. But if it performs any specific services for its members for remuneration definitely related to those services, then it shall be deemed to carry on business in respect of those services and the profits and gains therefrom shall be liable to tax.

The rules of a Stock Brokers' Association provided a definite scheme for allowing members to employ authorised clerks and for the admission, registration, conduct, control and supervision of the authorised clerks for the benefit primarily of the members who employed them and received from the members an annual fee of Rs. 100 for the admission of each authorised clerk. It was held, under the circumstances, that the income received by the Association by way of fees, was remuneration definitely related to specific services performed by the Association for its members and as such assessable to income-tax

A Chamber of Commerce registered without the words "Limited" under Section 26 of the Indian Companies Act 1913, is assessable to income-tax at the rates applicable to a Company.

(c) Clubs—The income derived by a club or society from its members is not liable to tax. But income derived from persons other than members of the Club in the shape of gate-money, sale of liquor etc., is liable to tax even if the surplus is not distributed amongst the members. Surplus arising from members' club, whether incorporated or not, which merely provide social, sporting or other amenities to the members only, is not taxable.

(d) Co-operative Societies—The profits of co-operative societies whether incorporated or not, are exempt both from income-tax and super-tax. The word "Profits" used here does not include interest on securities, dividends on shares, income from house properties or other sources assessable under section 12. Such profits though exempt are included in the computation of total income of the society for rate purposes.

(e) Mutual Benefit Societies & Mutual Insurance Companies—The income of a mutual benefit society derived solely from interest on overdue subscriptions and on loans to its members is not taxable. But interest derived from Government Securities or other investments is assessable. The income of a mutual insurance company derived from its members is also exempt on this principle. But interest derived from Government Securities or other investments is assessable. The income of a mutual insurance company derived from its members is also exempt on this principle. But the companies carrying on business of dividing society inursrance where shareholders and policy-holders are not the same, are not mutual societies and as such their income is taxable. The law has since been amended and the income of a mutual insurance business is now liable to tax. (*See Section 2(6C) & Rule of the Schedule to the Act*).

CHAPTER V

HEADS OF INCOME—SALARIES (SECTION 7)

§1 —**Income assessable under this head**—The following categories of income are assessable as "Salaries"—salaries, wages, annuities, pensions, gratuities, fees, commissions, perquisites, and share of profit in lieu of salary. "Salary" signifies a consideration for services of a higher class, whereas "Wages" is confined to the earnings of labourers and artisans. It connotes a relationship of employer and employed, principal and agent or some similar relation. An "Annuity" is a yearly payment of a certain sum of money for life or for a stated number of years. It means yearly payments in the nature of income (i.e. annuities periodically paid by the employer) as distinguished from annual payments of a capital amount in yearly instalments which are apparently not taxable. Annuities payable by any one other than an employer (i.e. under a Will) is assessable as "Income from Other Sources" and are not subject to deduction of income-tax at source. "Pension" is a compensation for past services usually paid periodically. Commuted value of pension is of course not taxable. "Gratuity" also is paid in consideration of past service, usually paid in lump sum. "Fees" denote fluctuating payments depending on the work done as distinguished from salaries which are fixed in relation to a period of time. Fees paid to Government pleaders are not salaries but professional earnings. "Commission" denotes payment being percentage on amounts involved. "Perquisite" means any casual income attached to an office or position in addition to salary which can easily be converted into money. Perquisites other than free residence, e.g. free medical advice, free conveyance for other than official duties, free board, free uniform etc., which cannot ordinarily be converted into money are therefore not taxable. Rent free residence, on the other hand forms part of the perquisites of an employee, the money value of which is computed under departmental instructions at not more than 10% of his salary.

Honoraria or fees paid to Government servants by local bodies or private persons for professional work, the whole of which in the first instance is credited to Government, after which the whole or part is drawn under proper sanction by the Government servant concerned, should be taxed as salary. They are obviously fees, commissions, or perquisites received in addition to salary. Rewards for passing examinations are not liable to tax unless by the conditions of his employment the assessee is compelled to pass the examinations. Such rewards granted to officials for passing compulsory examination are distinguishable from grants made to assist candidates to meet the expenses for preparing for such examination. These tuition grants are not liable to tax even if they are paid to successful candidates only. The so-called 'Rewards" paid to Military Officers and other ranks for passing compulsory language examinations are all to be treated as tuition grants and not as rewards and therefore are not liable to tax.

Bonus, gratuities etc, receivable by an assessee from his employer in connection with the termination of his employment by way of remuneration for his past services is taxable as salary. But if a payment is made solely as compensation for loss of employment and not by way of remuneration for past services, it is not taxable. A gift, pure and simple to an ex-employee or a payment to an ex-employee for refraining from competition would

presumably be neither compensation for loss of employment nor remuneration for past services. A payment due to an employee from an unrecognised Provident Fund which represents the employer's contribution and interest thereon, is taxable as salary. But a payment due to an employee from a recognised Provident Fund or Superannuation Fund is exempt from taxation.

Any war gratuity paid in respect of a person's service in His Majesty's Forces in connection with any hostilities in which His Majesty was engaged during 1939-45, excluding gratuities (by whatever name called) payable under a contract of service, shall not for the purposes of the Indian Income-tax be included in the total income or total world income of that person.

[*War Gratuities (Income-tax exemption) Ordinance, 1945*]

Salaries payable out of Indian Revenues to Government employees in any part of India and salaries payable by a Local Authority, established in exercise of the powers of the Central Government, are liable to tax. All servants of Government or 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.

Salaries or pensions payable in India by a foreign Government are taxable as income from "Other sources" and not under the head "Salaries". Deduction of Income-tax at source cannot in this case, be insisted upon by the Income-tax Authorities.

Leave salaries and pensions payable outside India in respect of services rendered within India are liable to tax under the head "Salaries" Similarly, Sterling overseas pay which is payable outside India in respect of services rendered in India is liable to Indian Income-tax. (The rate of exchange being 1s/6d per Rupee.)

The payment of salary to a person employed outside India, in respect of work done outside India, is not a payment which is chargeable under the head "Salaries". It is only where a payment is made to a person abroad in respect of services rendered within India that the payment is chargeable under the head "Salaries".

§2 –**Basis of Liability**—Until the Income-tax Amendment Act of 1939, salaries were assessable to tax only when they were 'received' by the assessee. The Amendment Act changed the basis to what is 'due' to the assessee whether paid or not'. The word 'due' is intended to refer to the date on which the remuneration becomes payable and has no reference to the period for which it is earned. Salaries earned by Government employees for any month become payable on the 1st day of the month following, as such salary for March 1947 "is due" in April 1947 and is liable to tax in the assessment year 1948-49. On the other hand salary earned by an employee of a private employer is payable during the month, as such salary for March 1947 "is due" in March 1947 and is liable to tax in the assessment year 1947-48. When any commission is payable to an employee subject to the sanction of the Board of Directors, it 'is due' on the date of sanction irrespective of the period for which it is payable; e.g. if a commission for the year ended 31st December 1946 is sanctioned on the 1st June 1947, it becomes 'due' on the 1st June 1947 and is liable to tax in the assessment year 1948-49.

Advances by way of loan or otherwise of income chargeable under the head salaries will be deemed to be salary 'due' on the date when the advance is received. But it must be distinguished from other classes of advances such as house building advance, motor car purchase advance, etc., which

are in the nature of loans. Any portion of salary withheld under an order of the Court is liable to tax.

Though 'salary' is now assessable on 'due' basis, the actual collection of tax from the assessee is postponed till he has received the remuneration. Salary taxed in an earlier year on an accrual basis cannot be taxed a second time on a receipt basis when received in a later year. Further where accrual basis has been adopted and the collection of tax has been postponed till the remuneration has actually been received, it would not be open to the Income-tax Authorities to change the basis afterwards and tax the salary on a receipt basis instead of on an accrual basis. Similarly, it cannot be taxed again when adjusted by the employer against salary earned in a later year.

§3—Deduction of Tax at source—[Section 18 (2)]. Any person responsible for paying 'salaries' shall at the time of payment deduct income-tax and super-tax on the amount payable at the average rate applicable to the estimated total annual income of the assessee under this head. The employer, however, has got the power to increase or reduce the amount to be deducted in making adjustments of excess or deficiency arising out of any previous deduction or failure to deduct. Tax must be deducted even when the salary is payable outside India if it is earned in India. The value of such salary in rupees is to be calculated at the prescribed rate of exchange i.e. 1s/6d per rupee. Where salary is payable to a Non-resident income-tax must be deducted at the maximum rate and super-tax at the average rate applicable to the estimated total annual income of the assessee under this head.

The person responsible for making the deduction shall pay the amount of tax deducted to the credit of the Central Government within one week from the date of such deduction. Within 30 days from the 31st March in each year he shall submit to the Income tax Officer, within whose jurisdiction the deduction is made, an annual return of the names and addresses of the employees, the amount of salary due for the year and the amount of tax deducted therefrom.

Though 'salary' is assessable on accrual basis the liability to deduct tax at source arises only when the remuneration is actually paid. Moreover, when tax is deducted at source, the assessee cannot be called upon to pay tax unless he has received the salary without deduction. If a person fails to deduct or after deduction fails to pay the tax to the Government within a week from the date of such deduction he shall be deemed to be an assessee in default, in respect of the tax. But no penalty can be recovered from him unless such person has wilfully failed to deduct.

The system of "deduction of income-tax and super-tax at source" gives rise to much complication in calculating the amount of tax payable when the rates are changed year to year. To avoid numerous adjustments the Finance Acts provide that the amount of income-tax and super-tax payable by an assessee in respect of income from "Salaries" should be calculated at the rates levied in the accounting year (instead of the rates ruling in the year of assessment).

Illustration 10—Sri Chintaharan Chatterjee receives a monthly salary Rs. 1,500. Calculate the amount of tax deductible therefrom every month during the year ending 31st March 1949.

ANSWER

Estimated total annual income under the head "Salary"	Rs. 18,000
Less: Earned income allowance @ 20%	3,600
	Rs. 14,400

Total Tax payable for the year—

Rs. 1,500	Nil		Nil
3,500 @ -/1/-	per Rupee	Rs.	218 12
5,000 @ -/2/-	,, ,,		625 0
4,400 @ -/3/6	,, ,,		962 8
		Rs.	1,806 4

$$\text{Average rate of tax} = \frac{\text{Rs. } 1,806\ \ 4}{\text{Rs. } 14,400\ \ 0} = 24.083 \text{ pies per Rupee.}$$

The amount of tax deductible every month - Rs. 150 8

Occasionally employees get salary free of tax. The real pay in that case is not only the amount of salary but the amount of tax as well and they are liable to pay tax on such amount. If that is again paid by the employer the process goes on *ad infinitum*.

Illustration 11—Sri Dwijottam Das receives a monthly salary of Rs 1,000 free of tax. Calculate his annual gross salary and the amount of tax payable by his employer during the year ending 31st March 1949.

ANSWER

Salary for twelve months					Rs. 12,000
Add: Tax on Tax, to be borne by the Employer					
				Rs. 793 12	
Income-tax on* Rs. 2,400	Nil			Nil	
1,500	Nil			Nil	
3,500 @ -/1/-	per Rupee		Rs.	218 12	
4,600 @ -/2/-	,, ,,			575 0	
* 159	Nil			Nil	
400 @ -/2/-	per Rupee			50 0	
235 @ -/3/6	,, ,,			51 7	
* 20	Nil			Nil	
81 @ -/3/6	per Rupee			17 12	
* 3	Nil			Nil	
15 @ -/3/6	per Rupee			3 5	916
		Gross salary			Rs. 12,916

*Earned income allowance @ 20% maximum Rs. 4,000.

Income-tax payable by the employer on			Rs.	12,916
at the rates ruling in fiscal year 1948-49				
*Rs. 2,583	Nil			Nil
1,500	Nil			Nil
3,500 @ -/1/-	per Rupee		Rs.	218 12
5,000 @ -/2/-	,,	,,		625 0
333 @ -/3/6	,,	,,		72 14
			Rs.	916 10

Illustration 12—Mr. E. Evans receives a monthly salary of Rs. 3,000 free of tax. Calculate his annual gross salary and the amount of tax payable per month by his employer during the year ending 31st March 1951.

ANSWER

Salary for twelve months				Rs. 36,000
Add: Tax on Tax to be borne by the Employer				
Income-tax on Rs.	*4,000 Earned Income Allowance			
	1,500	Nil		Nil
	3,500 @ 9 pies	per Re	Rs.	164 1
	5,000 @ 21 ,,	,,		546 14
	5,000 @ 36 ,,	,,		937 8
	17,000 @ 48 ,,	,,		4,250 0
Super-tax on Rs	25,000	Nil		Nil
	11,000 @ -/3/-	per Re.	Rs.	2,062 8
			Rs.	7,960 15
Income-tax on Rs.	7,961 @ -/4/-	per Re.		1,990 4
Super-tax on Rs.	4,000 @ -/3/-	,,		750 0
	3,961 @ -/4/-	,,		990 4
Income-tax &				
Super-tax on Rs.	3,730 @ -/8/-	per Re.	Rs.	1,865 0
	1,865 @ -/8/-	,,		932 8
	932 @ -/8/-	,,		466 0
	466 @ -/8/-	,,		233 0
	233 @ -/8/-	,,		116 8
	116 @ -/8/-	,,		58 0
	58 @ -/8/-	,,		29 0
	29 @ -/8/-	,,		14 8
	14 @ -/8/-	,,		7 0
	7 @ -/8/-	,,		3 8
	4 @ -/8/-	,,		2 0
	2 @ -/8/-	,,		1 0
				Rs. 15,420[1]
		Gross Salary		Rs. 51,420

*Earned income allowance @ 20% maximum Rs. 4,000

[1] Corrected to Rupee.

Income-tax payable on Rs. 47,420 (Rs. 51,420 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil		
3,500 @ 9 pies per Re.		Rs. 164 1		
5,000 @ 21 ,, ,,		546 14		
5,000 @ 36 ,, ,,		937 8		
32,420 @ 48 ,, ,,		8,105 0	Rs. 9,753 7	

Super-tax payable on Rs. 51,420 at the rates ruling in the fiscal year 1950-51.

Rs. 25,000	Nil	Nil	
15,000 @ -/3/- per Re.		Rs. 2,812 8	
11,420 @ -/4/- ,,		2,855 0	5,667 8
Total tax payable for the year			Rs. 15,420 15
Total amount of tax payable per month by the Emperor			Rs. 1,285 1[1]

§4 —Provident Funds and Super-annuation Funds (Sections 58A to 58V) — Provident Funds are always favoured by the State as they encourage thrift. Persons contributing to such Funds are, therefore, entitled to certain tax concessions in respect of the same.

(a) Provident Funds Act 1925 deals with the Provident Funds maintained for the benefit of employees of Government, Railways, Local Authorities, Universities etc. Any contribution made by the employee together with interest on accumulated balance is treated as "No Income" and as such excluded from the computation of total income. The employee's contribution will, however, be included in the computation of total income Rebate in respect of income-tax (but not Super-tax) will be allRowed on the contribution along with any life insurance premia up to one-sixth of total income (before deduction of earned income allowance) or Rs. 6,000 whichever is less. Income derived from the investments of the Fund is treated as "No Income" and as such totally exempt from Income-tax and Super-tax. When the accumulated balance is repaid to the employee at the time of his retirement, it is treated as "No Income" in his hands and is excluded from the computation of his total income for the relevant year.

(b) Recognised Provident Funds—Besides the Provident Funds to which the Provident Funds Act 1925 applies, Provident Funds maintained by private employers which conform to certain conditions, enjoy certain privileges in respect of income-tax. The main conditions to which such Provident Fund must conform in order to secure these concessions are:—

(i) That the funds shall be vested in two or more Trustees or in the Official Trustee under an irrevocable Trust;

(ii) 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;

[1] Pies neglected.

(iii) That in any case such recoveries shall be limited to the contributions made by the employer himself, and to the interest in respect of such contributions or accumulations thereof ;

(iv) That the subscriptions of the employees and the contributions by the employer shall be regular and not casual;

(v) That the employers' contributions shall not exceed the employees' subscription as a rule, and

(vi) That the employees shall be employed in India or the principal place of business of the employer shall be in India.

The income-tax concessions are as follows—contributions to a recognised Provident Fund both by the employer and the employee taken together shall be exempt from income-tax (but not from super-tax) up to 1/6th of the employee's annual salary before deduction of earned income allowance subject to a maximum of Rs. 6,000. In addition interest credited on the accumulated balance of any employee shall be exempt from income-tax (i) to the extent that it does not exceed 1/3rd of his salary and (ii) to the extent that it is allowed at a rate not exceeding 6%. per annum. The accumulated balance due to an employee, which includes interest on contributions, is also exempt, from income-tax and super-tax and is not included in the computation of his total income of the year in which the amount becomes payable. The contributions made by an employer to the individual accounts of his employees are allowed as business expenditure, as the fund is an irrevocable trust. Income on the investments held by the fund is also exempt from income-tax and super-tax.

(c) Unrecognised Provident Funds—Contributions made by an employee to Provident Fund not recognised by the Department are not exempt from income-tax. At the same time the employee does not pay any tax on the employer's contribution and interest credited on the accumulated balance, as these are not treated as income in his hands. As the fund is unrecognised, interest or other income arising out of investments thereof will be taxed in the hands of the fund itself as an 'association of persons'.

Contributions by an employer to a Private Provident Fund are allowed as a deduction if the fund is constituted as an irrevocable trust and if no part of the employer's contributions can be recovered by him, and further the employer has made effective arrangements for deduction of tax at source from any repayments made from the Fund. If the Fund remains in the hands or under the control of the employer by merely setting aside the money in his books without creating an irrevocable Trust, then no deduction can be allowed in the year in which the contributions are made. The total amount of periodical contributions will be allowed as a deduction to the employer in the year in which the accumulated balance is repaid to the employee, even though it includes contributions of earlier years, the reason being that the expenditure is actually incurred at the time of repayment.

Repayments from unrecognised Provident Funds are liable to income-tax and super-tax in the year of repayment in the hands of the recipient to the extent of the employer's contributions and interest thereon. Balance of the accumulated amount consisting of his own contributions and interest thereon is neither liable to any tax nor is included in the total income for rate purposes. The recipient is, however, entitled to get relief under Section 60(2) if the inclusion of the employer's contributions and interest thereon makes him liable to pay tax at a highter rate than that at which he would otherwise have been liable.

(d) Approved Super-annuation Funds—Super-annuation Funds are in the nature of Funds maintained by Insurance Companies, the employees contributing a certain amount from their salary which in fact represents premia for securing to them or to their dependents an annuity or pension at the time of their death or retirement and the employer making similar contributions to the Fund. When a Super-annuation Fund is approved on the lines similar to those for the recognition of Provident Funds, employee's contributions are exempted from payment of income-tax but not super-tax. The contributions are, however, included in the total income of the employee for rate purposes. Employer's contributions is not regarded as the income of the employee as the amount is not presently due to him and as such is, not taxable in his hands. Income derived from the investments of the Fund is treated as "No Income", and is not liable to any income-tax or super-tax.

Contributions made by the employer will be treated as business expenditure in his hands. If the contribution is not an ordinary annual contribution it will be treated either as an expense incurred in the year in which the sum is paid or as an expense to be spread over a number of years as the Central Board of Revenue may determine.

When the annuity or pension is paid to the employee it will be treated as income in his hands under the head "Salary". If, however, an amount is paid out of the Fund on the death of the employee or in lieu of or in commutation of an annuity or by way of refund of contributions on the death of the employee or on his leaving the employment, then no tax is payable thereon. On the other hand if any contribution (including interest thereon) is repaid to an employee while in service then income-tax shall be deducted by the Trustees of the Fund at the average rate of tax at which the employee was liable during the preceding three years.

(e) Unapproved Super-annuation Funds—Contributions made by an employee to a Super-annuation Fund not approved by the Department are not exempt from income-tax. The employee will not at the same time be called upon to pay any tax in respect of his employer's contributions. The Fund will not also get any tax exemption in respect of its income from investments.

Contributions to an unapproved Super-annuation Fund by an employer are treated as business expenditure if the Fund is constituted as an irrevocable Trust and if no part of the employer's contributions can be recovered by him. If, on the other hand, the Fund remains in the hands or under the control of the employer, then no deduction can be allowed in respect of the contributions made by him. Actual payments of pension to employees or to their widows or children should be allowed as business expenditure if the pensionary payment is fixed and recurring one. Pensions paid to persons who had at any time a share of interest in the business should, however, be disallowed.

When the employee gets the pension at the end of his service career, the same will be treated as income in his hands and taxed as "Salary". Lump sum repayment from an unapproved Super-annuation Fund in lieu of recurring pension are also liable to income-tax and super-tax in the hands of the recipient in the year of repayment to the extent of employer's contributions and interest thereon. He is, however, entitled to get relief under Section 60(2).

§5—Rebate on account of Life Insurance Premia & Provident Fund contributions.—(Section 15). Income-tax is not chargeable in respect of sums

which the assessee by condition of his employment is required to spend out of his remuneration, wholly, necessarily and exclusively in the performance of his duties. The amount is treated as "No income", as such is excluded from the computation of total income. The cost of travelling from a person's residence to his place of employment is, not admissible nor are any expenses of a private character is allowable.

Income-tax (but not super-tax) is not payable in respect of (1) any sums deducted from salary payable to a Government employee, in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or of making provision for his wife or children; (2) any contributions to a Recognised Provident Fund by the employer and the employee up to 1/6th of the salary, and interest credited on the accumulated balance up to 6% per annum, in so far as it does not exceed one-third of the salary; (3) any sums paid to effect an insurance on the life of the assessee or his wife for the benefit of his children. The amounts are included in the total income for determining the rate of tax applicable to the gross salary.

Out of the premia paid in respect of the policy that covers the risk of sickness and accidental injury and also the risk of death, only so much as is attributable to the risk of death is admissible as a deduction from the income liable to tax. Insurance premia payable in Sterling should be converted at the rate of exchange in force on the day on which the premia are paid. No relief is admissible on premia paid out of income accruing or arising outside India unless such foreign income is chargeable to Indian Income-tax. Where, however, in the case of Non-residents, foreign income is included in the 'total world income' and it is not possible to allocate definitely from which income –Indian or Foreign –the premium was paid, the relief admissible will be proportionate, i.e., in the same proportion as the Indian income bears to the total world income.

Abatement on account of insurance can be given effect to by the person deducting income tax from salary at the time of payment Where abatement is not claimed at the time when the tax is deducted from salary, it can be claimed in the assessment or if no assessment is made, a refund on account of such rebate can be claimed under Section 48 of the Act

The aggregate of any sums exempted shall not exceed 1/6th of the total income of the assessee (before deduction of the allowance for earned income) subject to a maximum of Rs 6,000. In the assessment year 1944-45 this allowance has been further restricted to 10% of the capital sum assured excluding bonus, etc., *i.e.*, if the policy is for Rs. 1,000 the maximum premium exempt should be Rs. 100 only It is to be particularly noted that this abatement does not apply to super-tax.

[*Regarding "earned income" allowance see Chap. X § 7*]

Illustration 13.—Fanindra Nath Sarkar received Rs. 18,000 as salary & allowances during the year ended 31st March 1950. He contributed Rs. 1,500 towards his Provident Fund; a similar amount was contributed by his employer. Interest at 5% amounting to Rs. 500 was credited to his Provident Fund Account. He paid Rs. 2,000 as Life Insurance premium (Capital sum assured being Rs. 25,000). Calculate the amount of income-tax payable by him if the Provident Fund is (1) registered under the Provident Funds Act, 1925, (2) recognised under the Income-tax Act. 1922 or (3) unrecognised.

ANSWER

(1) If the Provident Fund is registered under the Provident Funds Act, 1925.

Salary for 12 months ended 31st March 1950		Rs. 18,000
Less: Earned Income Allowance @ 20% of Rs. 18,000		3,600
		Rs. 14,400
Less: Contribution to Provident Fund	Rs. 1,500	
Life Insurance Premium	2,000	
	Rs. 3,500	
Limited to 1/6th of total income of Rs. 18,000		3,000
		Rs. 11,400

Income tax payable on Rs. 14,400 at the rates ruling in the fiscal year 1949-50

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs	164 1
5,000 @ 21 ,, ,,			546 14
4,400 @ 42 ,, ,,			962 8
		Rs.	1,673 7

Average rate of Income tax $\frac{\text{Rs. } 1673\text{-}7}{\text{Rs. } 14{,}400}$ = 22.312 pies per Rupee.

Income tax payable on Rs. 11,400 @ 22.312 pies per Rupee = Rs. 1,324 12

(2) If the Provident Fund is recognised under the Income-tax Act, 1922

Salary for 12 months ended 31st March 1950		Rs. 18,000
Employer's contribution	Rs. 1,500	
Interest on accumulated Balance	500	2,000
		Rs. 20,000
Less: Earned income allowance @ 20% of Rs. 20,000		4,000
		Rs. 16,000
Less: Contribution to Provident Fund—		
Employer's	Rs. 1,500	
Employee's	1,500	
Life Insurance premium	2,000	
	Rs. 5,000	
Limited to 1/6th of total income minus Provident Fund i.e. Rs. 18,000	Rs. 3,000	
Provident Fund interest	500	3,500
		Rs. 12,500

Income-tax payable on Rs. 16,000 at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil		Nil
3,500 @ 9 pies per Rupee		Rs.	164 1
5,000 @ 21 ,, ,,			546 14
5,000 @ 42 ,, ,,			1,093 12
1,000 @ 60 ,, ,,			312 8
		Rs.	2,117 3

$$\text{Average rate of Income-tax} = \frac{\text{Rs. 2,117-3}}{\text{Rs. 16,000}} = 25.40625 \text{ pies per Rupee.}$$

Income-tax payable on Rs. 12,500 (@ 25.40625 pies per Re. - Rs 1654-1

(3) **If the Provident Fund is unrecognised**

Salary for 12 months ended 31st March 1950	Rs. 18,000
Less: Earned Income Allowance (@ 20% of Rs. 18,000	3,600
	Rs. 14,400
Less. Life Insurance Premium	2,000
	Rs. 12,400

Income-tax payable on Rs. 12,400 (@ 22.312 pies per Re. - Rs. 1,441-0

§6—Relief under Section 60(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 financial year salary for more than twelve months, he is assessed at a rate higher than that at which he would otherwise have been assessed, the Central Government may grant him appropriate relief. In calculating relief to be granted to an assessee in respect of a year, any advantage gained by him in a previous year in which part of his salary was short paid will be taken into account.

Relief is also admissible when the accumulated balance due to an assessee participating in an unrecognised Provident Fund is received by him in a year, making him liable to pay tax at a higher rate, owing to the addition of the assessable portion of the money.

In terms of the latest departmental instructions the relief will be calculated as follows:—

(a) Total income of the assessee during the last three years (the last year being the year of repayment of Provident Fund money) should be computed by including 1/3rd of the Employer's contribution and interest thereon, in each year's income. (Employee's own contribution and interest thereon are treated as 'no income').

(b) Average rate of tax applicable to the total income as computed in (a) above should be calculated for each of the three years.

(c) Tax will be levied on the total income of the year of repayment including the assessable portion of the Provident Fund money;

(i) at the lowest rate of the three average rates computed as at (b) above, if the assessee has served for more than 25 years;

(ii) at the average rate of the three rates computed as at (b) above, if the assessee has served less than 25 years but more than 15 years;

(iii) at the highest rate of the three rates computed as at (b) above, if the assessee has served less than 15 years but more than 5 years.

No relief will ordinarily be given where the assessee has served less than 5 years.

In computing the average rate "earned income allowance" should be taken into account if the allowance was admissible for any year or for all the preceding years; and the earned income allowance should also be allowed for the amount of Provident Fund repayment which is treated as a part of the income of the year subject to the condition that the earned income allowance deducted from the Provident Fund repayment plus the earned income allowance deducted from salary of the year does not exceed the maximum allowance admissible in relation to the income chargeable under the head "Salaries" for that year.

Illustration 14—Sri Gangadhar Ganguly who retired from service after completing 23 yrs. 7 months during the year ended 31st March 1950 drew salary, allowances etc. totalling Rs. 18,000, income-tax on which amounting to Rs. 1673-7 was deducted. Provident Fund money standing at his credit Rs. 45,000 (50% being employer's contribution and interest thereon) was paid to him during the year without deduction of income-tax. Calculate the amount of tax payable by him for the year.

His total income for the years ended 31st March 1948 and 31st March 1949 amounted to Rs. 15,000 and Rs. 16,500 respectively from "Salary" only. Calculate the amount of tax payable by Sri Gangadhar Ganguly if relief under Section 60(2) is allowed to him.

ANSWER

Statement of total income for the year ended 31st March, 1950.
(Assessment year 1950-51).

Salary, House Allowance etc.	Rs. 18,000
Employer's contribution and interest thereon	22,500
Total income	Rs. 40,500

Income-tax payable on Rs. 36,500 (Rs. 40,500 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1940-50

Rs. 1,500	Nil		Nil	
3,500 @ 9	pies per Rupee	Rs.	164 1	
5,000 @ 21	,, ,,		546 14	
5,000 @ 42	,, ,,		1,093 12	
21,500 @ 60	,, ,,		6,718 12	Rs. 8,523 7

Average rate of Income-tax = $\frac{\text{Rs. } 8523\text{-}7}{\text{Rs. } 36,500} = 44.835$ pies per Re.

Carried over Rs. 8,523 7

	Brought Forward.		Rs. 8,523 7
Super-tax payable on Rs. 40,500 at "wholly earned income" rates ruling in the fiscal year 1949-50			
Rs. 25,000 Nil		Nil	
15,000 @ -/2/- per Rupee	Rs.	1,875 0	
500 @ -/3/- ,,		93 12	1,968 12
	Total Tax Payable		Rs. 10,492 3
Average rate of Super-tax = $\frac{\text{Rs. 1968-12}}{\text{Rs. 40,500}}$ = 9.333 pies per Re.			
Less: Amount deducted at source			1,673 7
	Net amount due		Rs. 8,818 12

If relief under Section 60(2) is allowed, the amount of tax payable will be as follows:—

Accounting year 1st April 1949 to 31st March 1950

Salary, House Allowance etc.	Rs. 18,000
1/3rd of Provident Fund money taxable (i.e. Employer's contribution and interest thereon)	7,500
	Rs. 25,500

Income-tax payable on Rs. 21,500 (Rs. 25,500 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500 Nil		Nil	
3,500 @ 9 pies per Rupee	Rs.	164 1	
5,000 @ 21 ,, ,,		546 14	
5,000 @ 42 ,, ,,		1,093 12	
6,500 @ 60 ,, ,,		2,031 4	Rs. 3,835 15

Average rate of Income tax = $\frac{\text{Rs. 3835-15}}{\text{Rs. 21,500}}$ = 34.256 pies per Rupee.

Super-tax payable on Rs. 25,500 at "wholly earned income" rates ruling in the fiscal year 1949-50.

Rs. 25,000 Nil		Nil	
500 -/2/- per Rupee	Rs.	62 8	Rs. 62 8

Average rate of Super-tax = $\frac{\text{Rs. 62-8}}{\text{Rs. 25,500}}$ = .4705 pies per Rupee.

Accounting year 1st April 1948 to 31st March 1949.

Salary	Rs. 16,500
1/3rd of Provident Fund money taxable	7,500
	Rs. 24,000

Income-tax payable on Rs. 20,000 (Rs. 24,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1948-49.

Rs. 1,500	Nil		Nil	
3,500 @ 12 pies per Rupee		Rs.	218 12	
5,000 @ 24 ,, ,,			625 0	
5,000 @ 42 ,, ,,			1,093 12	
5,000 @ 60 ,, ,,			1,562 8	Rs. 3,500 0

$$\text{Average rate of Income-tax} = \frac{\text{Rs. } 3,500}{\text{Rs. } 20,000} = 33.6 \text{ pies per Rupee.}$$

Accounting year 1st April 1947 to 31st March 1948.

Salary	Rs. 15,000
1/3rd of Provident Fund money taxable	7,500
	Rs. 22,500

Income-tax payable on Rs. 18,500 (Rs. 22,500 less earned income allowance of Rs 4,000) at the rates ruling in the fiscal year 1947-48.

Rs. 1,500	Nil		Nil	
3,500 @ 12 pies per Rupee		Rs	218 12	
5,000 @ 24 ,, ,,			625 0	
5,000 @ 42 ,, ,,			1,093 12	
3,500 @ 60 ,, ,,			1,093 12	Rs 3,031 4

$$\text{Average rate of Income tax} = \frac{\text{Rs. } 3,031\text{-}4}{\text{Rs. } 18,000} = 31.459 \text{ pies per Rupee}$$

$$\text{Average rate of Income-tax for the three years ended 31st March 1950} = \frac{34.256 + 33.6 + 31.459}{3} = 33.105 \text{ pies per Rupee.}$$

$$\text{Average rate of Super-tax for the three years ended 31st March 1950} = \frac{.4705}{3} = .1568 \text{ pies per Rupee.}$$

Income tax payable on Rs 36,500 (@ 33.105 pies per Re.	Rs	6,293 6
Super-tax payable on Rs 40,500 (@ .1568 ,, ,,		33 2
Total Tax Payable	Rs.	6,326 8
Less: Amount paid at source		1,673 7
Net amount due	Rs	4,653 1

CHAPTER VI

HEADS OF INCOME—INTEREST ON SECURITIES (SECTION 8)

§1—Income assessable under this head.—Interest on the Securities of the Central Government and Provincial Governments and on the debentures or other Securities of money issued by or on behalf of a Local Authority or a Company is assessable as 'Interest on Securities.' But interest payable on debentures issued by firms, associations, clubs or individuals is not assessable under this head, it being chargeable under Section 10 or 12. Interest on securities of the Government of India issued, contracted and repayable in India, accrues and arises in India even when it is actually paid outside India. Income under this head cannot be taxed before it is actually received.

§2—Tax-free Securities.—Interest on the securities of the Central Government which are issued or declared to be tax-free are exempt from income-tax When a Provincial Government issues a security as income-tax free, the income-tax on interest thereon shall be payable by that Provincial Government. So far as investors are concerned, therefore, securities issued income-tax free, whether by the Central or the Provincial Governments, stand exactly on the same footing, *i.e.*, income-tax is not payable on the interest received therefrom by the assessee, the interest should of course be included in the computation of his total income for the relative year, for the purpose of deciding whether he is liable to income-tax, as also for determining the rate at which his other income should be taxed Tax-free securities, unlike tax-free salaries, are not tax-compounded securities in the sense that the receiver of the interest is credited with a notional payment of income-tax. The owner therefore is not entitled to get credit in respect of such tax constructively paid by him; not even in respect of tax free securities issued by a Provincial Government, though the tax in such case is paid to the Central Government by the Provincial Government.

§3—Admissible expenses.—In computing the income of an assessee under this head, allowance should be made in respect of any sum deducted from such interest as commission by a Banker for collecting such interest on his behalf. Interest payable on money borrowed by the assessee for the purpose of investment in such securities is also an allowable expense subject to the condition that where the interest is payable outside India, the expense will not be allowed unless tax in respect thereof has been paid or deducted at source or is recoverable from an agent of the recipient in India.

Where a Bank or other concern engaged in business similar to that of a Bank, receives deposits or 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 tax to set off the entire interest on such borrowings against its entire income liable to tax. No attempt should be made 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 income 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 specifically

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 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 a clear proof and not a mere inference that the money was specifically borrowed for such investments and actually invested. They cannot be allowed to set off against their income liable to tax, interest on money borrowed for investments in tax-free securities and so invested.

Occasionally Government issues loans on tap, *i.e.*, the purchase price of the loan payable by a subscriber is increased by certain pies per cent. weekly from the last date of payment of interest to the date of purchase, this weekly increase being the net interest accruing on a *de die in diem* basis. At the end of the half year, however, full interest is paid to the holder. Where such interest is paid to the Reserve Bank of India, the Revenue Authorities should assess only the difference between the full interest and the increase in price over the nominal value representing the interest paid in respect of the broken period. This concession, however, does not apply to ordinary commercial transactions involving the purchase and sale of securities in the open market where the price including the net interest for the broken period, is settled between the vendor and the vendee. (*See* §6.)

It will be evident from the above that there is nothing to prevent the net income under this head being negative as a result of the amount of interest paid exceeding the amount of interest received.

§4—Deduction of tax at source —[**Section 18 (3)**]. The person responsible for paying any income chargeable under this head shall deduct income-tax but not super-tax at the maximum rate The person deducting income-tax shall furnish a certificate to the effect that income-tax has been deducted specifying the amount and the rate at which the deduction has been made Any sum deducted shall be deemed to be income received by the assessee and shall be treated as payment of income-tax on his behalf, the necessary credit being given to him in the assessment.

It frequently happens that security-holders hand over their Securities and Bonds to their Bankers for collection of interest. In that event the certificate would be given to the Bank for the whole block of Securities. In such a case the Income-tax Officer shall accept a certificate from the Bank and act upon it as if it were a certificate received direct from the person deducting income-tax at source.

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. Similarly there are persons whose assessable income is less than Rs. 3,600 and as such are not liable to tax There are other cases where the Income-tax Officer may be satisfied that the income of a holder of a 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 shall, in all proper cases, on the application made by the assessee, issue a certificate authorising the person paying the interest on securities to make no deduction of tax or to deduct tax at a specified lower rate than the maximum.

When the owner of a security to whom a certificate is granted has endorsed the security to his bank for collection of interest the officer responsible for paying the interest regards the Bank as a real holder of the security and takes no cognisance of any arrangement that may have been entered into between the security-holder and the Bank with the result that the certificates standing in the name of the real owner of the security granted by the Income-tax Officer becomes inoperative. Again sometimes the collecting Bank purchases securities on behalf of its constituents and holds them in its own name and does not endorse them in favour of the 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. To avoid the possibility of paying officers refusing to act on these exemption certificates, Treasury Officers have been instructed to act on such certificates when presented along with a declaration by the Bank to the effect that the security continues to be the property of the person named as the owner in the exemption certificate.

The system of "deduction of income-tax at source" gives rise to much complication in calculating the amount of Income-tax payable when the rates are changed year to year. To avoid numerous adjustments the Finance Acts provide that the amount of income-tax payable by an assessee other than a Company in respect of income form "Interest on Securities" should be calculated at the rates levied in the accounting year. As super-tax is not deductible at source at the time of payment of interest, super-tax payable by the assessee in respect of this income should be calculated at the rates levied in the assessment year.

§5—Appreciation and Depreciation of Securities—When shares and securities are held by a company, firm or individual as part* of its or his capital any appreciation or depreciation in their market value is outside the scope of the Income-tax Act, and similarly when the value of the shares and securities so held 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 a company, firm or an individual habitually uses part of its or his resources in the purchase of shares and securities with a view to obtaining profit on their sale and the subsequent reinvestment of the proceeds, the company, firm or individual is, in altering its or his investments, carrying on a trade for the sake of obtaining profit therefrom and the profits thus secured or losses incurred are trading profits or losses which must be taken into account in determining the assessment to income-tax. In such cases appreciation or depreciation in the values of the shares and securities would automatically be allowed in as much as the shares and securities would be treated as stock-in-trade and valued at cost price, or market price, whichever is lower. It will, therefore, always be a question of fact to be decided on the merits of each case whether the changes in investments are of sufficiently systematic a character to constitute the exercise of a trade, but if they are, the profits therefrom are liable to tax and an allowance must be made for any losses in calculating the amount of tax payable.

§6—Sale of Securities "Cum" interest—Interest on securities does not arise from day to day but on certain fixed days and where securities are purchased at a price expressed as a capital sum plus interest computed from the last due date to the date of sale, interest thus paid to the vendor is not deductible from the interest actually received by the purchaser on the

next due date, in assessing the purchaser under the head "Interest on Securities". Where a security is sold "Cum" interest after the due date for payment of interest, the purchaser drawing interest, and not the vendor, the vendor cannot claim for the purpose of assessment that the interest should be treated as his income and that he should be given credit for the amount of of tax deducted therefrom; on the other hand if he is a dealer in securities the profits from the purchase and sale of securities will be taxable in his hands. The mere quotation in the bargain of the estimated accured interest does not establish a separate contract in respect of interest, and if it were considered to be a separate contract, it would remain part and parcel of the whole purchase consideration.

§7—**Treasury Bills**—The difference between the price paid for a Treasury bill and the sum realised by the purchaser by holding the bill until maturity or by selling it or converting it before maturity, represents a profit chargeable to income-tax as income from "Other Sources" and the profit is not an accretion of capital The profit, thus made, constitutes income of the year in which it is received. Income-tax is not deducted at source in respect of this income.

Illustration 15—From the following statement of account compute the total income of Babu Gangadhar Ghosh and the amount of tax payable or refundable to him.

Date 1949	Particulars	Deposits Rs. As.	Withdrawals Rs. As.	Balance Rs As.
5th April	Six months' int on 3% Cal. Municipal Debs 1936-37 for Rs. 30,000 less Income-tax Rs. 140-10. Commission -/12/-	308 10		Dr. 5,491 10
30th ,,	Salary for April	150 0		
1st May	Self cheque No. 43207		400 0	
2nd ,,	Six months' int. on 3% Cal. Port Trust Debs. 1937 for Rs. 40,000 less Income-tax Rs. 187-8, Commission Re. 1	411 8		
31st ,,	Salary for May	150 0		
28th June	Int. on overdraft resulting from purchase of 3% Cal. Municipal Debentures		126 4	
	Salary for June	150 0		Dr. 4,847 12
30th July	Salary for July	160 0	,,	
22nd Aug.	Six months' int. on 3½% New Howrah Bridge Loan 1936-37 for Rs. 20,000 less Income-tax Rs. 101-9, Commission -/12/-	222 11		

Date 1949	Particulars	Deposits Rs. As.	Withdrawals Rs. As.		Balance Rs. As.
31st Aug.	Salary for August	160 0			
2nd Sept.	Self cheque No. 43208		600 0		
16th ,,	Six months' int. on 4% Loan 1960-70 for Rs. 10,000 less Income-tax Rs. 62-8, Commission -/8/-	137 0			
30th ,,	Salary for September	160 0			
8th Oct.	Six months' int. on 3% Cal. Municipal Debs 1936-37 for Rs 30,000 less Income-tax Rs. 140-10, Commission /12/-	308 10			
31st ,,	Salary for October	160 0			
	Self cheque No. 43209		450 0		
2nd Nov.	Six months' int. on 3% Cal. Port Trust Debs. 1937 for Rs. 40,000 less Income tax Rs. 187-8, Commission Re 1	411 8			
29th ,,	Salary for November	160 0			
30th Dec.	Int. on overdraft resulting from purchase of 3% Cal. Municipal Debentures		103 12		
	Salary for December	160 0		Dr.	3,961 11
1950					
31st Jan.	Salary for January	160 0			
21st Feb.	Six months' int. on 3½% New Howrah Bridge Loan 1936-37 for Rs. 20,000 less Income-tax Rs. 101-9, Commission -/12/-	222 11			
28th ,,	Salary for February	160 0			
3rd March	Self cheque No. 43210		600 0		
15th ,,	Six months' int. on 4% Loan 1960-70 for Rs. 10,000 less Income-tax Rs. 62-8, Commission -/8/-	137 0			
31st ,,	Salary for March	160 0		Dr.	3,722 0

ANSWER

Statement of Interest on Securitits.

	Date of credit	Gross	I/tax	Com.	Net
		Rs. As.	Rs. As.	Rs. As	Rs. As.
3% Cal. Municipal Debs.	5- 4-49	450 0	140 10	0 12	308 10
1936-37 for Rs. 30,000	8-10-49	450 0	140 10	0 12	308 10
3% Cal. Port Trust Debs.	2- 5-49	600 0	187 8	1 0	411 8
1037 for Rs. 40,000	2-11-49	600 0	187 8	1 0	411 8
3½% New Howrah Bridge	22- 8-49	325 0	101 9	0 12	222 11
Loan '36-37 for Rs. 20,000	21- 2-50	325 0	101 9	0 12	222 11
4% Loan 1960 70 for	16- 9-49	200 0	62 8	0 8	137 0
Rs 10,000	15- 3-50	200 0	62 8	0 8	137 0
		3,150 0	984 6	6 0	2,159 10

Statement of Total Income.

Salaries Rs. 150 × 3	Rs. 450		
160 × 9	1,440		Rs. 1,890
Interest on Securities	Rs. 3,150		
Less: Bank Commission and interest on overdraft	236		2,914
		Total Income	Rs. 4,804

Income-tax payable on Rs. 4,426 (Rs. 4,804 less earned income allowance @ 20% of Rs. 1,890 i.e. Rs. 378) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil	Nil	
2,926 @ 9 pies per Rupee	Rs.	137 3	Rs. 137 3
Income-tax paid at source			Rs. 984 6
Income-tax refundable (Rs. 984-6 less Rs. 137-3)			Rs. 847 3

CHAPTER VII

HEADS OF INCOME (Continued)
INCOME FROM HOUSE PROPERTY. (Section 9)

§1—Scope of the Section—The tax shall be payable by an assessee under this head in respect of properties consisting of buildings or lands appurtenant to a building by the owner of such property. Lands not attached to a building are not chargeable under this head. The income derived from vacant lands let out in Urban areas for the purpose of storing material etc. is chargeable to tax under Section 12 "Income from other sources". Though the word 'building' in ordinary sense means a block of brick or stonework covered by a roof, for income-tax purposes it includes docks, warehouses, bridges, and the like.

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. Buildings or lands occupied by the owner thereof for the purposes of his own business, profession or vocation, the profits of which are chargeable to tax, are not liable to pay tax under this head. The full profits of the business, profession or vocation without any deduction for such buildings or lands are chargeable under Section 10. But where a man who has invested his capital in house property and who keeps an office and a staff of rent collector, clerks, etc., is not carrying on a business. He is merely taking the ordinary steps necessary for enjoying the income from his property and the fact that the owner is a limited company having a place of business does not make any difference. Income derived from property belonging to a Company which has been incorporated for the purpose of owning and letting out such property is not assessable as income derived from business but should be assessed under Section 9 of the Income-tax Act.

Income of a building the erection of which was begun and completed between 1st April 1946 and 31st March 1952 is exempt from taxation for two years from the date of completion. The exemption applies to a complete unit of a building and not to any additions to an existing building unless the expenditure is more than Rs. 10,000, in respect of its net annual value computed after allowing all deductions admissible. This concession was given in the assessment year 1946/1947 with a view to stimulating building operations as a means of creating employment till the expected expansion in the industrial activity takes place in due course.

§2—Bonafide Annual Value of a building let out to tenants—Tax under the head "income from property" is 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 annual rent at which the building could be let from year to year if the owner bears all owner's burdens including municipal rates or taxes chargeable on the owner and if the tenant bears all tenant's burdens including municipal rates and taxes chargeable on the tenant. It 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 of taxes. It

is to be particularly noted that no deductions from the bonafide anual value are permissible on account of any municipal or local rates or taxes in respect of property. Where, under the tenancy agreement the owner pays the occupier's share of municipal tax, then the amount included in the rent on account of such tax is deductible from the gross rent for the purpose of arriving at the bonafide annual value. On the other hand if there is a stipulation that the tenant will, in addition to the regular rent payable to the owner, pay to the municipality the owner's share of tax, such tax must be deemed to be a part of the rental value and must be added to the rent to arrive at the bonafide annual value.

§3.—**Bonafide Annual Value of a building occupied by the owner for residential purposes** should not exceed 10% of his total income including this notional income. The annual value in this connection means the gross annual value before making the various deductions permissible under the Section. Ordinarily the net annual value can be found out by dividing the income from the remaining sources by 11.

Suppose X is the income from the remaining sources, and Y is the net annual value of the dwelling house. Then total income = X + Y.

$$Y = \frac{X + Y}{10} \times \frac{5}{6} \text{ or } Y = \frac{X+Y}{12} \text{ or } 12Y = X + Y \text{ or } 11Y = X$$

$$\text{Therefore } Y = \frac{X}{11}$$

Since a fictional person cannot physically reside, an assessee other than individual including Hindu undivided family is not entitled to claim any benefit under this provision.

§4—**Admissible deductions.**

(a) **Repairs**.—The allowance to be made on account of repairs has nothing to do with the period for which the house has been occupied. In India the cost of repairs is a fixed proportion of the annual value and does not depend on the actual expenditure incurred as in the United Kingdom. Where the owner has to bear the cost of repairs it is fixed at 1/6th of the annual value and it can neither be reduced nor increased by the Income-tax Officer. Where the tenant has to bear the cost, the sum allowable is the difference between the annual value and the rent paid by the tenant up to, but not exceeding 1/6th of the annual value

(b) **Insurance Premia**—The only insurance deduction permissible, is the amount of the annual premia paid to insure against risk of damage or destruction of the property concerned. In some cases owners insure against loss of rent. Where an owner asks for an allowance on account of the annual premia 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 should not be charged on the amount recovered from the insurance company.

(c) **Interest on mortgage and charges**.—Interest on mortgage or charge on the property, annual charges which are not of a capital nature, ground rent and interest on capital borrowed for acquiring, constructing, repairing, renewing or reconstructing the property are allowable deductions, from the annual value. So long as there is a mortgage or charge, the purpose for which the mortgage or charge was created is irrelevant and interest can be deducted from the annual value. But where the property

belongs to a Hindu Undivided Family, a charge created by any of its members alone over his share cannot be deducted either from the income of the family or from that of the member. Both the property and the mortgage must relate to the same assessee if the interest is to be deducted. The only condition attached to the allowance is that if the interest or charge is payable outside India, tax on it must have been paid, or deducted at source or recoverable from an agent under Section 43.

(d) **Land Revenue**—Sums paid on account of land revenue in respect of the property are allowable from annual value.

(e) **Collection charges**—As regards collection charges Rule 7 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. 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:—

(i) Only net legal expenses, that is, expenses after deducting any costs recovered from the opposite party will be deducted.

(ii) 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.

(iii) The total allowance for collection charges including legal expenses allowed must, of course, not exceed the statutory limit of 6 per cent.

(f) **Vacancy**—The amount allowable in respect of vacancy is that part of the bonafide annual value which is proportional to the period during which the property is wholly unoccupied. Where a person owns a house and keeps it furnished and ready for his own occupation or for the occupation of his guests, the house cannot be said to be vacant in any year merely because it was not occupied by the owner at any time during that year. Such a house may be unused but cannot be called vacant. So also in the case of a house kept ready as a guest house, it is not vacant on the ground that no guest resided during the year. Vacancy primarily relates to cases in which the house is habitually let out to tenants or intended to be so let out and there is a vacancy between two tenancies. It may also apply where a house is being dismantled and kept shut by the owner.

(g) **Unrealised rent**—Unrealised rent in respect of any property is exempt from income-tax and is also excluded in computing the total income of an assessee, provided that—

(i) the tenancy is bonafide;

(ii) the defaulting tenant has vacated or steps have been taken to compel him to vacate the property;

(iii) the defaulting tenant is not in occupation of any other property of the assessee;

(iv) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Income-tax Officer that legal proceedings would be useless, and

(v) the annual value of the property to which the unpaid rent relates was included in the assessed income of the year for which that was due and income-tax has been duly paid on such assessed income.

Illustration 16—Mr. J. Joglekor of 47, Cornwell Avenue owns several house properties at Calcutta which are let out to tenants. He also owns the house occupied by him the municipal valuation of which is Rs. 3,000. From the following statement of his account for the year ended 31st March 1948 compute his total income and the amount of tax payable by him.

To Municipal taxes paid—	Rs.		Rs.
(50% being occupier's share of tax)		By Rent of 28 Victoria Terrace (Municipal valuation Rs 9,600)	
47, Cornwell Avenue	150	Occupied for the whole year	12,000
28, Victoria Terrace	600	Rent of P42, Maidan Extension (Municipal valuation Rs. 24,000) Occupied for 9 months (Constructed during 1-1-47 to 30-6-47)	22,500
P42, Maidan Extension	1,125	Rent of 18, Satyen Square (Municipal valuation Rs 8,000)	
18, Satyen Square	360	Occupied for the whole year	9,600
23/1, Riverside Road	240	Rent of 23/1, Riverside Road (Municipal valuation Rs. 4,800)	
Ground rent for 18, Satyen Square	210	Occupied for 10 months	4,500
Land revenue for 23/1, Riverside Road	120		
Repairs	5,120		
Fire Insurance premium	940		
Collection charges	600		
Interest paid on Overdraft resulting from construction of P42, Maidan Extension	3,000		
Life Insurance Premium	4,250		
Excess of income over expenditure	31,885		
	Rs. 48,600		Rs. 48,600

ANSWER

Gross Bonafide annual value of houses let out to tenants—			
28, Victoria Terrace	Rs. 12,000		
18, Satyen Square	9,600		
23/1, Riverside Road	5,400	Rs.	27,000
Less: Occupier's share of Municipal tax—			
28, Victoria Terrace	Rs. 300		
18, Satyen Square	180		
23/1, Riverside Road	120		600
Net Bonafide annual value of houses let out to tenants—		Rs.	26,400

	Brought forward		Rs. 26,400
Less: Statutory allowance for repairs @ 1/6th of net bonafide annual value	Rs.	4,400	
Ground Rent for 18, Satyen Square		210	
Land Revenue for 23/1, Riverside Road		120	
Fire Insurance Premium		940	
Collection Charges		600	
Vacancy re: 23/1, Riverside Road (Rs. 5,400 less Rs. 120) / 6		880	7,150
			Rs. 19,250
Add. Gross bonafide annual value of the dwelling house (10% of total income)	Rs	2,100	
Less: Statutory allowance for repairs		350	1,750
Total income from house properties			Rs. 21,000

Income-tax payable on Rs. 21,000 at the rates ruling in the fiscal year 1948-49.

Rs. 1,500	Nil	Nil
3,500 @ -/1/- per Rupee	Rs. 218	12
5,000 @ -/2/- ,, ,,	625	0
5,000 @ -/3/6 ,, ,,	1,093	12
6,000 @ -/5/- ,, ,,	1,875	0 Rs. 3,812 8

(Average rate of Income-tax = $\frac{\text{Rs. } 3,812\ 8}{\text{Rs. } 21,000\ 0}$ = 34.86 pies per Re.)

Less: Rebate in respect of Life Insurance premium of Rs. 3,500 @ 34.86 pies per Rupee	635 8
Net tax payable	Rs. 3,177 0

Note :—In terms of Section 4 (3) (xii) income from P42, Maidan Extension is exempt from Income-tax for two years.

Illustration 17—Mr. H. Hora of 17, Lansdown Terrace, owns several house properties at Calcutta, which are let out to tenants. He also owns the house occupied by him, the municipal valuation of which is Rs. 6,000. From the following statement of his account for the year ended 31st March 1950 compute his total income and the amount of tax payable by him.

	Rs.	Rs.		Rs.
To Municipal taxes paid			By Rent of 18 Lansdowne Terrace (Municipal valuation Rs. 4,800) occupied for the whole year	6,000
17 Lansdowne Terrace	1,200			
18 ,, ,,	1,080			
12 Chowringhee Lane	2,700			
24 Lower Circular Road	600			
30 Hirak Street	360	5,940	Rent of 12 Chowringhee Lane (Municipal valuation Rs. 12,000) occupied for 9 months	11,250
(50% being Occupier's share of tax)				
Ground rent for 12, Chowringhee Lane		1,430	Rent of 24 Lower Circular Rd (Municipal valuation Rs. 3,000) occupied for 8 months	2,400
Land Revenue for 30 Hirak St.		150		
Repairs		2,040		
Fire Insurance Premia		1,410	Rent of 30 Hirak Street (Municipal valuation Rs. 2,400) occupied for 10 months	2,250
Collection charges		400		
Interest paid on Overdraft resulting from constructing 30 Hirak St.		500		
Life Insurance Premia		2,000		
Excess of Income over expenditure		8,030		
	Rs.	21,900		Rs. 21,900

ANSWER

Income from House Properties as per page 75 Rs. 13,040

Income-tax payable on Rs. 13,040 at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee		Rs. 164 1	
5,000 @ 21 ,, ,,		546 14	
3,040 @ 36 ,, ,,		570 0	Rs. 1,280 15

Average rate of Income-tax = $\frac{\text{Rs. 1280-15}}{\text{Rs. 13,040}}$ = 18.86 pies per Re.

Less: Rebate in respect of Life Insurance premium of Rs. 2,000 @ 18.86 pies per Re.	106 7
Net tax Payable	Rs. 1,084 8

*

(Pages 74 and 75 should be read together)

Statement of Income

Serial	Name of St. & No. of Property.	Whether the Property is occupied by the owner or is let out.	Municipal valuation of the property.	Full annual rent payable by the tenant.	Municipal tax paid on behalf of the tenant.
1	2	3	4	5	6
1.	17, Lansdowne Terrace	Is occupied by the owner	Rs 6,000	—	—
2.	18, do.	Is let out	4,800	Rs. 6,000	Rs. 540
3.	12, Chowringhee Lane.	do	12,000	15,000	1,350
4.	24, Lower Circular Road	do	3,000	3,600	300
5.	30, Hirak St.	do	2,400	2,700	180

Serial	Name of St. & No. of Property	Ground Rent paid.	Land Revenue paid.	Collection charges paid.	Vacancy allowance claim (Proportion of col. 7)
		11	12	13	14
1.	17, Lansdowne Terrace.		—	—	—
2.	18, do.		—	—	—
3.	12, Chowringhee Lane.	Rs 1,130		Rs 400	Rs. 3,412
4.	24, Lower Circular Road.		—	—	1,100
5.	30, Hirak St.	—	Rs 150	—	420

Note. Fire Insurance premia and Collection charges have been shown against 12, Chowringhee Lane for convenience.

from House Properties

Annual letting value after adjusting Columns 5 & 6	One-sixth of the annual letting value as per Col. 7	Insurance premia paid.	Int. on Mortgage or charge etc.	Name of St. & No. of Property.
7	8	9	10	
Rs 1,304 (being 10% of total income)	Rs. 217	—	—	17, Lansdowne Terrace
5,460	910	- -		18, do.
13,650	2,275	Rs 1,410	- -	12, Chowringhee Lane
3,300	550	- -	- -	24, Lower Circular Road
2,520	420	- -	Rs. 500	30, Hirak St.

Period for which the Property remained vacant	Total of Columns 8 to 14.	Net annual value assessable.	Name of St & No. of Property.
15	16	17	
-	Rs 217	Rs 1,087	17, Lansdowne Terrace
-	910	4,550	18, do.
3 months	8,927	4,723	12, Chowringhee Lane
4 ,,	1,650	1,650	24, Lower Circular Road
2 ,,	1,490	1,030	30, Hirak St.

Total income from House Properties = Rs. 13,040

CHAPTER VIII

HEADS OF INCOME (Continued)
PROFITS AND GAINS OF BUSINESS, PROFESSION OR VOCATION (Section 10)

§1—**Scope of the Section**—Tax is payable by an assessee under this head in respect of the profits and gains of any business, profession or vocation carried on by him. Before the Amendment Act of 1939, income from profession or vocation was classed under a separate head. But the two heads are now amalgamated as the principles relating to the assessment and allowances are the same. The word "Business" has been defined in the Income-tax Act as including any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture A 'profession' on the other hand involves the idea of an occupation requiring purely intellectual skill or manual skill controlled as in painting, sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale of commodities. The Act does not contain any directions relating to the computation of profits generally, though there are several provisions in it relating to the admissibility of certain allowances and deductions.

§2 –**Admissible Allowances**

(a) **Rent of Premises**—Rent paid for the premises in which the business, profession or vocation is carried on, is an admissible expense in computing the income under this head. Where a substantial part of the premises is used by the assessee for his own residence the proportionate amount of the rent, as determined by the Income-tax Officer, should be disallowed Where the premises is owned by the owner of the business, profession or vocation, no allowance on account of rent is permissible, but is admissible when paid to a partner. Where rent fluctuates with profits, it is still allowable; but where it is designed to recoup the landlord for structural improvement it is not deductible.

(b) **Repairs to building, machinery, plant etc**—Where the assessee is himself the owner of his business premises, the amount spent on repairs to the premises is allowed as an admissible expense. Where he is the tenant of the premises, the amount spent by him on repairs if his lease requires him to execute repairs, is allowed as a deduction Current repairs as are required to keep the machinery, plant etc., in serviceable condition are also allowable. But expenditure which would have increased the capital value should be disallowed as capital expenditure Initial repairs of second hand machinery or of a ship, which is purchased in a state of repair, will be as much capital expenditure as it would have been, if the work had been executed by the seller and the cost added to the ship, as such, they should be disallowed.

(c) **Interest on Capital borrowed**—Interest paid in respect of the capital which has been borrowed for the purposes of the business is admissible even if it varies with the amount of profits earned. But this allowance is not admissible in the case of interest chargeable under the Act, which is payable outside India, unless tax thereon has been paid, deducted or is recoverable from an Agent under Section 43, except in the case of

public loans issued before 1st April 1938. Interest paid to partners by firms cannot be deducted but interest paid to members of other Associations is an admissible deduction. No allowance can be made for interest on share capital of Companies but interest on debentures is admissible.

(d) **Insurance premia**—Allowance in respect of insurance premia is 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 but 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.

(e) **Rates and Taxes**—Land revenue, local rates or municipal taxes paid in respect of the portion of the premises used for the purposes of business, profession or vocation, are admissible expenses In computing income from business, profession or vocation, 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 of the business, profession or vocation. No allowance can be given on account of any other rates or taxes whatsoever. All rates and taxes, therefore whether levied on profits of a business, profession or vocation or which are charged on the proprietor in respect of anything other than the actual portion of the premises used for the purposes of the business, profession or vocation must be disallowed Any sum paid on account of cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion or otherwise on the basis of such profits or gains should therefore be disallowed.

(f) **Bonus or Commission to Employees**—Sums paid by way of bonus or commission to an employee for services rendered are allowable if such sum would not have been payable to him as profits or dividends and if it is of a reasonable amount with reference to the pay and conditions of his service, the profits of the business and the general practice in similar business, profession or vocation. The condition that it should not be payable as profits or dividends precludes the application of this concession to partners or shareholders. The various conditions laid down are intended to prevent collusive deduction in combination with the influential employees

(g) **Bad Debts and Irrecoverable Loans**—An allowance for bad and doubtful debts is made on the following conditions: —(i) It is allowed only where the accounts of the assessee are not kept on the cash basis; (ii) only such amount as the Income-tax Officer estimates to be irrecoverable is allowed; and (iii) the amount allowed must not exceed the amount actually written off in the books of the assessee If the amount ultimately recovered on such debt is greater than the difference between the whole debt and the amount so allowed, the excess will be deemed to be a profit of the year in which it is recovered and if less, the deficiency will be treated as a business expense.

Whether a debt is bad, and when it becomes such, are questions of facts to be determined in cases of disputes, not by the assessee or by the exercise of any option on his part but by the Revenue Authorities on a consideration of all relevant and admissible evidence. The mere fact that

a debt was incurred on a date beyond the period of limitation will not itself make a debt bad; still less will it fix the date at which a debt will become bad. A statute-barred debt is not necessarily bad, nor a non-statute-barred debt necessarily good. The age of the debt is, no doubt, a relevant matter to be taken into consideration It makes no difference whether the debt is due from a human being or from a joint stock company, in either case it is a question of fact whether and when a debt becomes bad. There is no justification for treating all debts from Companies as necessarily good, merely because the debtor company has not gone into liquidation. The burden of proving that a debt has become bad lies on the assessee; so also the burden of proving that what is claimed as bad debt has already been taxed in an earlier year.

Irrecoverable Loans—When an assessment is made of profits or income from a banking or money-lending business, loans which cannot be recovered should be deducted from the assessed profits of such business at the time when such loan can be definitely proved to be irrecoverable. For example, if a Banker has lent out 5 lakhs of rupees and received Rs 50,000 as interest but has during the same year lost an irrecoverable loan of Rs. 25,000, he should be assessed on Rs. 25,000. Similarly, if the same Banker receiving Rs. 1,00,000 as interest on his loans, suffers a loss of an irrecoverable loan amounting to one lakh during the same year, the income to be assessed to income-tax from the money-lending business in that year will be nil. These examples will apply whether the assessee had previously been assessed to income-tax or not.

This instruction will also apply to the assessment of other traders, where loans have been made in connection with the business and in which the loans are of the nature of the business and the loss is a true trading loss.

The irrecoverable loans in the sense referred to above are sometimes confused with "Bad Debts" but they are of a totally different nature Money lent out on interest is the stock-in-trade of a money-lender or Banker and the loss of such stock-in-trade can clearly be regarded as a trading loss like the loss of the stock-in-trade of any other trader where the loss is not covered by insurance. In settling claims of this nature the question has always to be considered whether money-lending is or is not a part of the business of the trader in question The investments of savings or occasional loans made to acquaintances cannot be considered to be loans made in the course of trading.

(h) **Depreciation**—There is no definition of "Depreciation." The word is used in practice by Accountants in varying senses. Ordinarily it means, wear and tear which cannot be made good by repairs. That is to say, it means the insidious and irreparable decay of the building, machinery, plants, etc.

The rates of depreciation are prescribed in Rule 8 [*see Appendix B*] and the information that must be furnished to obtain this allowance is set out in Part V of the form of return of income. The buildings, machinery, plant or furniture for which depreciation allowance is claimed must be the property of the assessee and must be used for the purposes of the particular business in the relevent year, the profits or gains of which are being computed. Moreover it can be claimed only in respect of the particular classes of buildings, machinery, plant or furniture which are mentioned in Rule 8 The word "Plant" includes Vehicles, Books, Scientific Apparatus and Surgical Equipments purchased for the purposes of the business, profession or vocation.

No allowance can be claimed in respect of any portion of a building which is used as a residence by the assessee. Buildings belonging to the owner of a business and used by him to accommodate his employees, are buildings used for the purposes of business where the occupation by the employees is subservient to and necessary for the performance of their duties, irrespective of the fact that rent is charged by the owner or not. When machinery is kept ready for use at any moment in a particular factory under an express agreement, from which taxable profits are earned, the machinery can be said to be used for the purposes of business, although it is not actually worked and depreciation can be claimed in respect of such machinery. Depreciation can also be claimed by the owner of a machinery even if it has been leased to another. Where buildings, machinery, plant and furniture are let out on hire, the person who lets them shall be entitled not only to depreciation allowance but also all other allowances in respect of annual repairs, insurance premia and obsolescence.

Depreciation allowance in respect of ocean-going steamers and motor vessels is computed at certain percentage on the "original cost" thereof. The expression 'original cost' includes the cost of freight, pay of Engineers and staff who erect the machinery, put it in working order and carry out experiments to test it. Depreciation in respect of other assets is computed at certain percentage on the 'written down value' thereof. The expression 'written down value' is (i) in the case of assets acquired in the previous year, the actual cost to the assessee and (ii) in the case of assets acquired before the previous year, the actual cost to him less all depreciation actually allowed to him in the earlier years.

As the scope of "obsolescence allowance" was extended to buildings at the time of demolition or destruction, an assessee might, for example, occupy a building as his residence for many years and when the time to scrap it was drawing near, bring it into use for the purposes of business, and scrap or demolish the building a year later to get an allowance of the whole of the difference between the original cost and one year's depreciation allowance. To safeguard Government revenue "written down value" in the case of building would now mean the actual cost to the assessee less the depreciation that would have been allowable at the existing rates and on the diminishing value basis as if the building had been used for the purposes of business from the date of its acquisition.

Where an assessee owns a number of business and the profits and gains of any one of them are insufficient to cover the full depreciation admissible on the buildings, machinery, plant etc. used for the purpose of that particular business, the excess depreciation can be set off against income which has accrued to the assessee from other heads of income. Where, however, full effect cannot be given, the allowance shall be added to the amount of the depreciation allowance of that year and so on for succeeding years In carrying forward depreciation, losses should be set off before depreciation, consequently the carry forward of depreciation is not restricted to six years. The aggregate of depreciation allowances made under the Income-tax Act 1922 or any of the earlier Acts repealed by it or under the Act of 1886 must not in any case exceed the original cost to the assessee.

Where a person succeeds to a business, profession or vocation, the depreciation allowance due to the successor in respect of buildings, machinery etc. taken over by him from his predecessor should be worked out on

the basis of the original cost to the successor (not on the cost to the predecessor). The same applies where the person is not a successor but merely a purchaser. The successor is not entitled to take advantage of the unabsorbed depreciation which his predecessor might have been entitled to.

With a view to stimulating industrial activity additional depreciation of buildings and machinery was provided for in the assessment year 1946-47. In the case of a new building the erection of which was begun and completed during 1st April 1946 to 31st March 1952 the additional depreciation was 15% of the cost and in other cases of building the rate was 10%. In the case of machinery or plant the rate was 20% of the cost. This initial additional depreciation should not be taken into account for the purpose of determining written down value in the succeeding year but it should, however, be taken into account for calculating "obsolescence" allowance.

To give some more relief to the business community the allowance for depreciation was doubled in respect of buildings and machineries installed after 31st March 1948. Owing to the abolition of capital gains tax with effect from 1st April 1948, it is apprehended that old assets might be transferred at enhanced prices with the main purpose of reducing tax liabilities. To safeguard against such transfer of assets from one business to another it has been provided that the concession of "double allowance" would not be extended to buildings and machineries which had, at any time prior to 1st April 1948, been used in a business. This concession of "double allowance" is admissible in addition to the extra allowance for double or multiple shift-working and the initial depreciation allowance admissible for the first year of erection of the building or installation of machinery. To illustrate, suppose a new machinery of a paper mill was installed on 1st April 1948 the cost incurred being Rs. 10,00,000. The amount of depreciation allowance admissible for the year 1948-49 (assessment year 1949-50) would be:

(a) 20% of Rs. 10,00,000 being initial depreciation which would not be deductible from Rs. 10,00,000 for determining written down value for the subsequent year, plus

(b) 20% (10% + 10%) of Rs. 10,00,000 being double allowance which would be deductible from Rs. 10,00,000 for determining written down value.

The total depreciation allowance for the assessment year 1949-50 would be Rs. 4,00,000 and the written down value of the machinery for the subsequent year would be Rs. 8,00,000 (Rs. 10,00,000 less Rs. 2,00,000).

(i) **Obsolescence**—Ordinarily the word is used to signify the unsuitability of a machinery or plant on account of its being out of date. Whenever any machinery or plant is sold or discarded for whatever reason, a deduction in respect of obsolescence can be claimed; and the amount to be allowed is the excess of the written down value over the sale price or the scrap value as the case may be provided the assets have been written off in the books of the assessee. Where the sale price exceeds the written down value, this excess will be deemed to be profits of the year in which the sale takes place and will be included in the computation of income of that year.

In the assessment year 1946-47 the scope of this allowance was widened to include buildings and to permit the allowance being given in respect of a building, machinery or plant not only when it is sold or discarded but also when it is demolished or destroyed. The difference between the written down value (for this purpose the written down value is arrived by deducting also the initial additional depreciation allowance, if any) and the sale or scrap value is allowed as a deduction. But if any insurance, salvage or compensation moneys are received in respect of these assets, these moneys, if they are less than written down value minus the scrap value, will be deducted from the allowance admissible and, if they are greater, the excess will be taxed to the extent of the difference between the original cost and the written down value less the scrap value. As the clause stood before amendment, if machinery or plant was sold for more than its original cost, the excess over the original cost was taxable. As amended, the excess over the original cost will not be taxable in future.

(j) **Dead or useless animals**—A deduction is allowed in respect of animals used for the purposes of the business, which have died or become permanently useless. But animals which are the stock-in-trade of the business should not be included in this head. The amount allowable is the difference between the original cost of the assessee and the amount, if any, realised in respect of the carcasses of the animals, and is admissible whether the animals are replaced or not.

(k) **Scientific Research**—In the assessment year 1946-47 the Act was amended to allow contributions made to Scientific Research Institutions (*See Appendix D*) and expenditures incurred on Scientific Research related to the business or the class of business carried on by the assessee. The expenditure is admissible irrespective of whether it is of a revenue or capital nature—the latter being allowable in five annual instalments if incurred by the assessee himself. Retrospective effect was given to this allowance from the assessment year 1945-46. The allowance must relate to capital expenditures incurred by an assessee for carrying out Scientific Research in five consecutive "previous years" commencing with the "previous year" in which the expenditure was incurred or if the expenditure was incurred within three years (year here means a period of 12 months) prior to the date of commencement of the business, in five consecutive "previous years" beginning with the year in which the business was commenced.

(l) **Miscellaneous deductions**—Any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purposes of business, profession or vocation, should be allowed as a deduction from the computation of income under this head. Whether a particular expenditure has been incurred solely to earn the profits or whether it is capital expenditure depends in each case on the nature of the business, commercial practice, the nature of the expenditure and other relative circumstances. But unless the expenditure is incurred for the purposes of the business, profession or vocation, profits of which are being assessed, it cannot be allowed. Moreover, the outlay in respect of which the deduction is claimed must be an expenditure incurred for the purposes of the business and not for a mere sharing of the profits, as assessability to income-tax is attached as soon as profits accrue, and the Government is not concerned with the destination or application of the profits. A payment out of profits and conditional on profits being earned, cannot actually be described as a payment to earn profits. On the other hand,

expenditure in the course of the trade which is unremunerative or in respect of an activity the income of which is not taxable is none-the-less a proper deduction if wholly and exclusively made for the purposes of the trade. It does not require a receipt on the credit side to justify the deduction.

The following instructions on the admissibility of certain expenses may be noted in this connection:—

(i) Contributions to private provident funds by an employer are allowable if the fund is constituted as an irrevocable trust and if no part of the employer's contributions can be recovered by him. If the fund remains in the hands or under the control of the employer, no contributions by him would be allowed as a deduction, but actual payments made to employees leaving the service would be allowed in the year in which such payments are made, so far as such payments relate to the employer's contributions only.

(ii) Contributions to private superannuation funds by an employer are also allowable, if the fund is constituted as an irrevocable trust and if no part of the employer's contribution can be recovered by him. If such a fund remains in the hands or under the control of the employer no contributions by him will be allowed as a deduction but actual payments of pension to ex-employees or to their widows or children should be allowed as a deduction when the pensionary payment is a fixed and recurring one. No claims on account of pensions will however, be entertained when they are paid to persons who have or who at any time had a share of interest in the business, profession or vocation.

(iii) 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 should be treated as business expenses and allowed as a deduction in assessing income from business.

(iv) 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 business 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.

(v) Sums embezzled by an employee are an admissible charge against the business of his employer.

(vi) Assessees sometimes receive from their constituents payments intended to cover Railway expenses, cooly 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 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.

(vii) 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) purpose, 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.

(viii) Sums received for political purpose should be included in income and the corresponding expenditure on these purposes should not be allowed as a deduction from the taxable income.

(ix) Strictly speaking, the cost of audits and similar operations conducted specially for income-tax purposes whether in connection with appeals or with revision petitions cannot be allowed as a deduction from taxable profits.

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 liable to income-tax. 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 for 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. But expenses connected with subsequent proceedings before the higher authorities in Appeal, Review or High Court will not be allowed.

(x) The premiums received by a Company on issue of shares are capital receipts and the cost of issuing shares is capital expenditure.

[*Regarding "earned income" allowance see Chap. X* §7.]

§3—Inadmissible expenses.—The following allowances are not admissible in computing the income under this head :

(a) Any sum paid on account of a cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed as a proportion or otherwise on the basis of any such profits or gains.

(b) A payment which is chargeable under the head "Salaries" if it is payable without India unless tax has been paid thereon or deducted therefrom under Section 18.

(c) Interest, salary, commission or remuneration paid by a firm to any partner of the firm, whether the firm is registered or unregistered.

(d) A payment to a provident fund or other fund established for the benefit of the employees unless effective arrangements have been made to secure proper deduction of tax from any payments made from the fund which are chargeable under the head "Salaries".

Illustration 18.—Your clients Messrs Abrasive Co., Ltd. send to you the Company's audited Profit and Loss Account for the year ended 31st March 1949, with instructions to advise them as to the income of the company that will be liable to tax for the assessment year 1949-50, as also to send to them your observations by way of a short report on such of the items appearing in the Profit and Loss Account, which, in your opinion, should be added to the figure of profit shown in the account for computing income liable to assessment.

MESSRS. BRASIVE CO., LTD.

Profit and Loss Account for the year ended 31st March, 1949.

	Rs.		Rs.
To Salaries and Wages	50,000	By Gross Profit	8,00,000
Octroi Duty and Licence Fees	20,000		
Rent, Rates and Taxes	30,000		
Stationery and Printing	10,000		
Postage and Telegrams	10,000		
Insurance Premia	30,000		
Travelling Expenses	20,000		
Directors' and Auditors' Fees	20,000		
Company's contribution to Provident Fund (Recognised)	10,000		
Payment of lump-sum premium for renewal for 5 years at the old rent of the lease of the business premises	50,000		
Payment of Bonus written off (this bonus amount the Company had undertaken to pay along the payment of the capital amount borrowed)	50,000		
Loss written off due to overdrawing of Commission by the Managing Director of the Company	30,000		
Carried over	Rs. 3,30,000	Carried over	Rs. 8,00,000

Brought forward		Rs. 3,30,000	Brought forward	Rs. 8,00,000
Loss arising from destruction of Stock-in-trade (uninsured)		70,000		
Loss on sale of Machinery written off		10,000		
Particulars as under—				
Original Cost	Rs. 1,00,000			
Less: Depreciation written off and allowed up to 1948-49 Assessment	50,000			
Balance as per books on 1st April 1948	50,000			
Less: Sale Proceeds	40,000			
Loss written off	10,000			
Depreciation written off		1,00,000		
Balance being Profit subject to Tax		2,90,000		
		Rs. 8,00,000		Rs. 8,00,000

NOTES:— (i) Allowable Depreciation amounts to Rs. 80,000.
(ii) You are not required to calculate the actual amount of tax payable by the Company.

(C. A. FINAL—MAY 1950.)

ANSWER

Statement of total income for the year ended 31st March, 1949. (Assessment year 1949-50).

Balance of Profit & Loss A/c.		Rs. 2,90,000
Add : *Inadmissible expenses*—		
(1) Lump sum premium	Rs. 40,000	
(2) Bonus written off	50,000	
(3) Managing Director's commission written off	30,000	
(4) Depreciation written off in excess	20,000	1,40,000
Total Income		Rs. 4,30,000

NOTES:—(1) Proportionate amount of the lump sum payment for renewal of the lease of the business premises is allowable. Hence 4/5th of Rs. 50,000 is disallowed.

(2) As the payment of bonus was made for borrowing capital, it is disallowed.

(3) Overdrawing of commission by the Managing Director is not a debt incurred for running the business and as such is disallowed.

(4) Depreciation charged in excess of the rates prescribed under Rule 8 is disallowed.

(5) Loss arising from destruction of Stock-in-trade (uninsured) Rs. 70,000. The amount is admissible—Presumably the corresponding credit entry for this item has been passed through the Stock A/c maintained in the Ledger reducing the value of the closing stock. There would, therefore, be no necessity of adjusting the opening stock for the next year's assessment.

Illustration 19.—Sri Indu Bhusan Bose prepared the following Profit and Loss Account of his cloth shop for the year ended 31st March 1950. You are required to compute his total income and the amount of tax payable by him.

Profit and Loss Account for the year ended 31st March, 1950.

To Salaries & wages	Rs. 12,400	By Gross Profit	Rs. 34,625
Rent, Rates etc.	1,600	Discount received	375
Household Expenditure	2,000		
Income-tax	900		
Advertisement	800		
Postages & Telegrams	600		
Gifts & Presents	900		
Fire Insurance Premia	400		
Life Insurance Premia	1,100		
Reserve for Bad Debts	800		
Interest on Capital	600		
Audit Fees	400		
Net Profit transferred to Capital A/c.	12,500		
	Rs. 35,000		Rs. 35,000

ANSWER

Statement of total income for the year ended 31st March, 1950. (Assessment year 1950-51).

Net Profit as per Profit & Loss A/c.		Rs. 12,500
Add: Inadmissible expenses:-		
Household Expenses	Rs. 2,000	
Income-tax	900	
Gifts & Presents	900	
Life Insurance Premia	1,100	
Reserve for Bad Debts	800	
Interest on Capital	600	6,300
Total Income		**Rs. 18,800**

Income-tax payable on Rs. 15,040 (Rs. 18,800 less earned income allowance @ 20% i.e. Rs. 3,760) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil	
3,500 @ 9	pies per	Rupee	Rs. 164 1	
5,000 @ 21	,,	,,	546 14	
5,000 @ 36	,,	,,	937 8	
40 @ 48	,,	,,	10 0	Rs. 1,658 7

Less: Rebate in respect of Life Insurance premia of Rs. 1,100 @ 21.171 pies per Re. 121 5

Net amount payable Rs. 1,537 2

NOTES:—(1) Household Expenses being personal expenses, are disallowed.

(2) Income-tax paid in relation to income, is disallowed.

(3) Gifts and presents being expenditure not for the purposes of business are disallowed.

(4) Reserve for Bad Debts is not allowed but actual Bad Debts are admissible.

(5) Average rate of Income tax $= \frac{\text{Rs. } 1,658\ 7}{\text{Rs. } 15,040}$ = 21.171 pies per Rupee.

Illustration 20.—From the following Trading and Profit and Loss Account of the Jogta Colliery Co., Ltd. for the year ended 31st March, 1950, compute its total income.

THE JOGTA COLLIERY CO., LTD.

Trading Account for the year ended 31st March, 1950.

To Stock of coal (as at 1st April, 1949)	Rs. 60,000	By Sales	Rs. 31,00,000
Wages	19,40,000	Stock of coal (as at 31st March, 1950)	50,000
Electric Power	90,000		
Stores	1,20,000		
Rent, Royalty & Wayleaves	90,000		
Workmen's Compensation Insurance	75,000		
National Health Insurance	50,000		
Carriage on sales	80,000		
Gross profit carried down	6,45,000		
	Rs. 31,50,000		Rs. 31,50,000

Profit and Loss Account for the year ended 31st March, 1950.

To Salaries		Rs. 1,20,000	By Gross Profit brought down		Rs. 6,45,000
Office Rent		18,000	Discount		5,000
Sales Agency Commission		15,700			
Bonus to Employees		12,300			
Income-tax		12,800			
Fire Insurance		4,200			
Interest on Debentures		18,000			
Directors' Fees		3,750			
Bank charges		2,250			
Reserve for Bad Debts		5,000			
Preliminary expenses written off		30,000			
Discount on issue of Debentures		15,000			
Depreciation—	Rs.				
Boilers @ 10%	11,300				
Underground Machinery @ 20%	6,000				
Shafts & Inclines @ 7½%	13,200	30,500			
Net Profit for the year		3,62,500			
		Rs. 6,50,000			Rs. 6,50,000

ANSWER

Statement of total income for the year ended 31st March, 1950.
(Assessment year 1950-51).

Net profit as per Profit & Loss Account			Rs 3,62,500
Add: *Inadmissible expenses*—			
Income-tax	Rs.	12,800	
Reserve for Bad Debts		5,000	
Preliminary Expenses		30,000	
Discount on the issue of Debts.		15,000	
Depreciation		30,500	93,300
			4,55,800
Less: Depreciation at the prescribed rates			
Boilers @ 8%	Rs.	9,040	
Underground machinery @ 15%		4,500	
Shafts & Inclines @ 7%		12,320	25,860
		Total Income	Rs. 4,29,940

Note :—(1) **Bonus to Employees**—This is allowed being a regular payment year after year made to the employees in addition to their salaries.

(2) **Preliminary expenses, discount on the issue of Debentures**—These being capital expenses are inadmissible.

Illustration 21.—On the basis of the accounts below, compute the total income of the Company for the assessment year 1950-51.

THE KUVER CHEMICAL CO., LTD.

Trading and Profit and Loss Account for the year ended 31st March, 1950.

To Stock as at 1st April, 1949			Rs 70,000	By Sales	Rs. 8,60,000		
Raw Materials			2,60,000	Less: Returns	16,000	Rs.	8,44,000
Wages			1,20,000				
Packing materials			30,000	Stock as at 31st March, 1950			86,000
Fuel and Electric			15,000				
Gross Profit			4,35,000				
			Rs. 9,30,000			Rs.	9,30,000
Establishment charges			Rs. 90,000	By Gross Profit		Rs.	4,35,000
Advertisement & Propaganda			65,000				
Travelling expenses			16,500				
Delivery and conveyance			7,500				
Rent and Taxes			8,600				
Repairs and Renewals			6,400				
Printing and Stationery			9,000				
Postage & Telegram			1,800				
Telephone Charges			1,200				
Income-tax			7,250				
Interest on Loans			1,800				
Fire Insurance Premia			2,700				
Hospital Fees of Employees			1,550				
Removal charges to new premises			2,400				
Entertainment expenses			600				
Bad Debts written off			7,000				
Law charges			6,700				
Miscellaneous expenses			12,600				
Directors & Auditors Fees			3,490				
Depreciation							
Building	Rs 6,250						
Machinery	35,250						
Lorries	2,250						
Furniture	360		44,110				
Managing Agent's commission			23,185				
Net Profit carried to Balance Sheet			1,21,629				
			Rs 4,35,000			Rs.	4,35,000

Notes—(1) Miscellaneous expenses include Rs. 2,000 Donation to an unapproved institution and Rs 750 lost through embezzlement by an employee.
(2) Law charges include Rs. 4,300 being cost of defending a suit brought against the Company for encroachment on Municipal lands.

THE KUVER CHEMICAL CO., LTD.

Balance Sheet as at 31st March, 1950

LIABILITIES			ASSETS			
Authorised Capital :—			Land at cost			Rs. 1,75,000
5,000 6% Preference Shares of Rs 100 each.		Rs 5,00,000	Buildings (First class		Rs 2,50,000	
50,000 Ordinary Shares of Rs. 10 each.		5,00,000	Additions during the year		9,875	
		Rs 10,00,000			Rs. 2,59,875	
Subscribed Capital :—			Less: Depreciation @ 2½% up to 31-3-49	Rs. 9,875		
5,000 Preference Shares	Rs 5,00,000		For the year	6,250	16,125	2,43,750
25,000 Ordinary Shares	2,50,000		Chemical Machinery		Rs 3,90,000	
	Rs. 7,50,000		Additions during the year		10,000	
Less: Calls unpaid	5,000	Rs 7,45,000			Rs. 4,00,000	
Loan Account		30,000	Less: Depreciation @ 10% up to 31-3-49	Rs. 47,500		
Sundry creditors for expenses of goods supplied		75,000	For the year	35,250	82,750	3,17,250
Employees' security deposit		5,000				
Profit and Loss account			Motor Lorries		Rs. 16,000	
Balance from last account	Rs. 35,000		Less: Depreciation @ 25% up to 31-3-49	Rs. 7,000		
Less: Preference Div. for the year ended 31-3-49	30,000		For the year	2,250	9,250	6,750
	Rs 5,000		Furniture		Rs 5,000	
Add: Net profit for the year ended 31-3-50	1,21,620	1,26,620	Additions during the year		1,582	
					Rs. 6,582	
			Less: Depreciation @ 6% up to 31-3-49	Rs. 582		
			For the year	360	942	5,640
			Stock-in-Trade			86,000
			Sundry Debtors			90,000
			Cash at Bank		Rs. 55,000	
			Cash in hand		2,230	57,230
		Rs. 9,81,620				Rs. 9,81,620

ANSWER

Statement of total income for the year ended 31st March, 1950 (Assessment year 1950-51).

Net profit as per Profit and Loss Account		Rs. 1,21,620
Add: *Inadmissible expenses*		
Income-tax	Rs. 7,250	
Removal charges	2,400	
Entertainment expenses	600	
Law charges	4,300	
Donation	2,000	16,550
Total income		Rs. 1,38,170

Illustration 22.—From the following particulars find out the amount of depreciation allowable for the assessment year 1950-51:—

(1) Building (1st class) constructed during the year ended 31st March, 1943—Rs. 40,00,000. Additions during the years ended 31st March, 1944, 31st March, 1946, 31st March, 1947 and 31st March, 1948—Rs. 1,00,000, Rs. 2,500, Rs. 1,125 and Rs. 775 respectively.

(2) Electric Installations during the year ended 31st March, 1943—Rs. 8,00,000 Additions during the year ended 31st March, 1948 —Rs. 27,608.

ANSWER

Depreciation Statement.

Cost of erection during the year ended 31-3-43	Rs. 40,00,000	Rs. 8,00,000
Less: Depreciation for the assessment year 1943-44	1,00,000	80,000
Written down value as at 1-4-43	Rs. 39,00,000	Rs. 7,20,000
Additions during the year ended 31-3-44	1,00,000	—
	Rs. 40,00,000	Rs. 7,20,000
Less: Depreciation for the assessment year 1944-45	1,00,000	72,000
Written down value as at 1-4-44	Rs. 39,00,000	Rs. 6,48,000
Less: Depreciation for the assessment year 1945-46	97,500	64,800
Written down value as at 1-4-45	Rs. 38,02,500	Rs. 5,83,200
Additions during the year ended 31-3-46	2,500	—
	Rs. 38,05,000	Rs. 5,83,200
Less: Depreciation for the assessment year 1946-47	95,125	58,320
Written down value as at 1-4-46	Rs. 37,09,875	Rs. 5,24,880
Additions during the year ended 31-3-47	1,125	—
Carried over	Rs. 37,11,000	Rs. 5,24,880

Brought Forward	Rs. 37,11,000	Rs. 5,24,880
Less: Depreciation for the assessment year 1947-48	92,775	52,488
Written down value as at 1-4-47	Rs. 36,18,225	Rs. 4,72,392
Additions during the year ended 31-3-48	775	27,608
	Rs. 36,19,000	Rs. 5,00,000
Less. Depreciation for the assessment year 1948-49	90,475	50,000
Written down value as at 1-4-48	Rs. 35,28,525	Rs. 4,50,000
Less: Depreciation for the assessment year 1949-50	88,213	45,000
Written down value as at 1st April 1949	Rs. 34,40,312	Rs. 4,05,000
Less: Depreciation for the assessment year 1950-51	86,008	.40,500
Written down value as at 1st April 1950	Rs. 33,54,304	Rs. 3,64,500

The amount of depreciation allowable for the assessment year 1950-51 is Rs. 1,26,508.

§4—Rules for computing profits and gains of Tea Companies—Income derived from the sale of tea grown and manufactured by the seller in 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. Consequently in assessing the profits of tea companies there will be allowed, 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 but no capital expenditure in connection with such extensions. 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 though the estate is not in bearing.

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 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.

Under Section 15 of the Indian Tea control Act 1933, the owner of a tea estate may tranfer his right to obtain export licenses in whole or in part to any party. Where the export or production 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, and 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 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 tea grown elsewhere). If a quota is purchased by the owner of another tea estate and is utilised 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. 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 on an estate not his own, the expenditure will be allowed in full in computing the purchaser's profits, which, however, are not covered by Rule 24 and are, therefore, taxable in full.

Illustration 23.—From the following Accounts of the Balacoba Tea Estates Ltd., compute its total income.

Garden Account for the year ended 31st March, 1950.

General Charges				By Transfer to Profit & Loss A/c.	Rs. 44,726
Superintendence	Rs. 3,910			Transfer to Development A/c.	409
Allowances	610				
Agency charges & visiting	1,824				
Cooly lines, latrines & water supply	328				
Workmen's Comp. Insurance	68				
Medical & Sanitation	438				
Festival expenses	100				
Recruiting expenses	402				
Staff Provident Fund (Recog.)	492				
Dearness allowance	520	Rs	8,692		
Field Works					
Nurseries and seeds	Rs. 343				
Cart Roads & Bridges	105				
Estate paths & culverts	169				
Ravins & Boundaries	73				
Bush sanitation	106				
Prunning	530				
Weeding	1,460				
Cost of manure	1,540				
Pests & diseases	265				
Plucking including baskets	3,480				
Carried over	Rs. 8,071	Rs.	8,692	Carried over	Rs. 45,135

Brought forward	Rs. 8,071	Rs. 8,692	Brought Forward		Rs. 45,135
Purchase of green leaf (1,04,585 lbs.)		11,041	19,112		
Crop Works					
Manufacture					
Factory Staff	Rs. 650				
Labour	1,605				
Packing materials	6,218				
Fuel for power	1,403				
,, ,, drier	717				
Transport & storage	234				
Postages &c on tea parcels	5,505				
Water supply	360				
Fire Insurance	230		16,922		
Capital A/c.					
Abandoned area re-planted			409		
		Rs.	45,135		Rs. 45,135

Profit and Loss Account for the year ended 31st March, 1950.

To Amount transferred from Garden A/c.	Rs. 44,726		63,960 lbs tea sold		Rs. 59,265
Bonus to Staff		380	2,492 ,, ,, in stock		2,492
Debts and Advance written off		84	66,452 lbs. @ 14.87 as. per lb.		Rs. 61,757
Depreciation—			Sale of export rights for 32,797 lbs. out of the allotment for the year.		6,333
Bungalow	Rs. 958				
Cooly Lines	154				
Factory Bldgs.	312				
Tea Machinery	746				
Furniture	216	2,386			
Profit for the year transferred to Balance sheet		20,514			
	Rs.	68,090			Rs. 68,090

Tea made from Estate Leaf	=	40,008 lbs.
,, ,, ,, Bought Leaf	=	26,444 ,,
Total tea made	=	66,452 ,,

The Company is liable to pay tax on 40% of its profits from Estate leaf and sale of Export rights and on 100% of its profits from leaf bought from outside.

THE BALACOBA TEA ESTATES, LTD.

Balance Sheet as at 31st March, 1950

LIABILITIES			ASSETS		
Authorised capital			Land at cost		Rs. 72,856
25,000 Ordinary shares for Rs. 10 each		Rs. 2,50,000	Development A/c as at 31-3-49	Rs. 21,736	
			Upkeep for the year	409	22,145
Paid up capital					
17,000 Ordinary shares of Rs. 10 each		Rs 1,70,000	Manager's Bungalow written down value as at 31-3-49	Rs. 33,382	
Sundry creditors		6,400	Additions during the year	4,920	
Employees' Provident Fund Account		2,300		Rs. 38,302	
Unclaimed dividends		680			
Profit & Loss Account			Less: Depreciation @ 2½%	958	37,344
Balance from last year	Rs. 106				
Net profit for the year	20,514	20,620	Cooly Lines written down value as at 31-3-49	Rs. 3,074	
			Less: Depreciation @ 5%	154	2,920
			Tea Factory Building written down value as at 31-3-49	Rs. 6,232	
			Less Depreciation @ 5%	312	5,920
			Tea Machinery written down value as at 31-3-49	Rs. 8,294	
			Less: Depreciation @ 9%	746	7,548
			Furniture written down value as at 31-3-49	Rs. 3,595	
			Less: Depreciation @ 6%	216	3,379
			Stores at cost		4,000
			Stock of tea		2,492
			Book debts considered good		3,850
			Cash at Bank	Rs. 36,512	
			Cash in hand	1,034	37,546
		Rs. 2,00,000			Rs. 2,00,000

ANSWER

Cost of manufacturing Bought leaf.

Direct charges			
Crop Works		Rs. 16,922	
Depreciation on Factory and Machinery		1,058	Rs. 17,980
Indirect charges			
Superintendence	Rs.	3,910	
Allowances		610	
Agency charges and visiting		1,824	
on Rs. 45,135	Rs.	6,344	
Therefore proportionate amount on Rs. 16,922 =			2,519
Upkeep of Cooly Lines, &c.	Rs.	328	
Workmen's Compensation Insurance		68	
Medical and sanitation		438	
Depreciation on Bungalow, Lines and Furniture		1,328	
on 10,508 Coolies	Rs.	2,162	
Therefore proportionate amount on 4,368 coolies			898
Cost of manufacturing 66,452 lbs @ 5.15 annas per lb.			Rs 21,307
Therefore cost of manufacturing 26,444 lbs. @ 5.15 annas per lb			Rs 8,511 10

Bought Leaf Account.

To Value of 1,04,585 lbs. Green leaf	Rs. 11,041 0	By Receipt from 26,444 lbs. tea made from bought leaf @ 14.87 annas per lb.	Rs. 24,576 6
Cost of manufacturing 26,444 lbs. Tea made from bought leaf @ 5.15 annas per lb.	8,511 10		
Profit	5,023 12		
	Rs. 24,576 6		Rs. 24,576 6

Adjusted Profit and Loss Account for Income-tax purposes.

To General Charges	Rs. 8,692		By Proceeds of 66,452 lbs. tea at 14.87 annas per lb.	Rs. 61,757	
Field Works including bought leaf	19,112		Less: 26,444 lbs. tea from bought leaf (considered separately)	24,577	
Crop works	16,922			Rs. 37,180	
	44,726		Sale of export rights out of the allotments for the year		6,333
Less: Festival Expenses	100	Rs. 44,626			
Bonus to Staff		380			
Bad Debts written off		84			
Depreciation		2,386			
		Rs. 47,476			
Less: Value of green leaf purchased	11,041				
Cost of manufacturing bought leaf	8,512	19,553			
		Rs. 27,923			
Profit		15,590			
		Rs. 43,513			Rs. 43,513

Statement of total income.

40% of the profit from Estate leaf and sale of Export rights—Rs. 15,590	Rs.	6,236
Profit on manufacturing Bought leaf		5,024
Total income	Rs.	11,260

§5—Rules for computing profits and gains of Insurance Companies—(Schedule to the Act)—Prior to 1939 Insurance Companies were assessed on what was called their surplus income. The assets of the Company and the year's income were added and from the resultant figure the amount of liabilities of the Company as ascertained by actuarial valuation was deducted, and what remained was the surplus income. On a careful examination it was found that this surplus did not by any means represent income, for a large portion of it was only policy-holder's money which was returned to them as bonus. The method of assessment of Insurance Companies was consequently radically altered by the Amendment Act of 1939.

(A) Mode of assessment—Life business—Rules 2 and 3 provide for the greater of the following two amounts (a) and (b) to be taken as the income for assessment purposes of a life insurance business :—

(a) the gross external incomings of the preceding year, (as defined in

clause (ii) of Rule 5), *Less* management expenses of the preceding year (as defined in clause (iii) of Rule 5) and

(b) the annual average surplus of the last inter-valuation period before the assessment year, *Less* one half of the amount paid to or reserved for or expended on behalf of policyholders.

For the purpose of arriving at the amount (a) above the expenses of management are subject to the following maximum :—

In respect of single premium policies	7½% of the premiums received in the preceding year.
Plus	
In respect of policies for which the number of annual premiums received is less than 12	A percentage of first year's premiums received during the preceding year equal to 7½ times the number of such annual premiums and 12% of renewal premiums received during the preceding year.
Plus	
In respect of policies for which the number of years during which premiums are payable is less than 12	A percentage of first year's premiums received during the preceding year equal to 7½ times the number of such years and 12% of renewal premiums received during the preceding year.
Plus	
In respect of all other policies	90% of first year's premiums received during the preceding year and 12% of renewal premiums received during the preceding year.

It is important to note that in calculating the amount (b), (i) any expenditure which cannot be allowed under Section 10 must be disallowed; (ii) the deficit or unappropriated surplus of any period preceding the inter-valuation period under consideration must be excluded from the deficit or surplus shown on the face of the actuarial valuation Balance Sheet on the last day of the inter-valuation period; (iii) in the first computation under the rule, in allowing one half of the amounts paid to or reserved for or expended on behalf of the policyholders no account is to be taken of any such amount to the extent to which, it is paid out of or is in respect of the unappropriated surplus of a previous intervaluation period. If, for example, the amount of bonus recommended to be distributed is Rs. 3½ lakhs, but the actuarial valuation includes previous unappropriated surplus of Rs. 1 lakh, one-half of the balance of Rs. 2½ lakhs (*i.e.*, Rs. 1¼ lakhs only) is to be allowed as a deduction, and (iv) depreciation of or loss on realisation of securities or other assets and appreciation of or gain on realisation of securities or other assets should be taken into account.

In calculating amount (b) the whole of the interest on tax-free securities of the Central Government is to be deducted from the adjusted surplus of the inter-valuation period under consideration for income-tax purposes only and not for super-tax. The net amount of adjusted annual surplus arrived at after excluding the interest on tax-free securities will represent "the profits and gains of life insurance business" and not the total income of the company. The annual average of the interest on tax-free securities will then

have to be added to the above " profits and gains " and super-tax will be leviable on the whole income. Further if the inter-valuation period exceeds 12 months, then credit is to be given against the tax computed on the annual average adjusted surplus, for the amount of the annual average tax deducted at source from Interest on Securities or otherwise paid during the said inter-valuation period.

In computing income under (b) above, tax-free allowance of Rs. 4,500 admissible in respect of unremitted foreign income should be disallowed.

Non-life business.—As regards non-life insurance business, the profits disclosed in the annual accounts (under the Insurance Act 1938) after adjustment on account of expenses not admissible under Section 10 are to be treated as income for assessment purposes. Profits and losses on the realization of investments and depreciation and appreciation of the value of investments are to be taken into account.

In dealing with non-life insurance business (fire, marine, motor-car, etc.) a fair and proper reserve for unexpired risk are to be allowed with proper safeguard to prevent manipulation of accounts. And, where, as not infrequently occurs, the reserve is divided into two parts, the first of which 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, such a reserve may also be allowed. The following points have to be borne in mind :—(i) 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; (ii) they must also be specifically appropriated to meet liabilities under existing contracts, and (iii) the contracts must be with policy holders

Dividing Societies.—The companies carrying on dividing society or assessment business are in a different position from insurance companies 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. Some arbitrary method of determining the taxable income of companies transacting this kind of business has been fixed and under Rule 7 of the Schedule this is done by taking 15% of the premium income of the 'previous year'.

Provident Insurance Societies.—Exemptions granted to Provident Insurance Societies which comply with Provident Insurance Societies Act 1912, or which have been exempted from its provisions, were withdrawn by the Income-tax (Amendment) Act, 1924, but 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) & 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.

(B) Valuation of Securities.—In computing the surplus of a Life Insurance Company an actuary has to consider first the value of its assets in its Life Insurance Fund and then has to deduct from that the liability to pay sums by way of bonus on capital sums on death of policy-holders. In the valuation of the assets he may or may not, according to his practice, make a deduction for the depreciation of the securities which form part of the Fund. That depreciation may be very considerable, in the case of some

of the companies in India, it has in fact been very considerable. When he makes the valuation of the liability, first he has to determine what he thinks the life of each policy-holder will be and for that he uses certain mortality tables. Then he has to determine what proportion of the premiums which he is likely to get will be payable in expenses and how much the expenses will amount to. Then he has to take into account the fact that the funds of the company will be earning interest all the time, so that he finally arrives at this liability by taking for each policy the amount he expects to pay away, the amount of premiums and interest he expects to receive and the amount of expenses he is likely to incur. In determining the rate of interest, he may be optimistic or pessimistic. One actuary may on a set of circumstances determine that there was no surplus, but a loss, whereas another actuary more optimistic, may, in fact, determine quite a large surplus. Most of that difference depends on the rate of interest which is adopted in arriving at the liability. In India the rate of interest adopted is normally calculated in this manner. The value of the investments as depreciated is first ascertained Then the actual yield as a ratio of that value is secondly ascertained, and then that rate, or an average of that rate, with certain deductions which are dictated by prudence, is adopted for the valuation of the liabilities. So long as that basis is adopted there is no harm but it is possible, and in fact in the United Kingdom it has been done and may be done in India for the company not to write off depreciation heavily but to take a rate of interest which is being, calculated by reference to the yield on the depreciated securities. If that is done then the liabilities are overstated relatively to the assets resulting in a deficit, when there should be a surplus or a much smaller surplus than is in fact warranted. To guard against such cases the Income-tax Officers are authorised to make such adjustments to the depreciation or appreciation of securities as is fair and just where the liability has been stated on a basis which is materially inconsistant with the basis on which the securities have been valued.

Illustration 24.– From the following Revenue Account of the Jubilee Life Assurance Company, Ltd., compute its total income assessable for 1950-51. In the assessment year 1948-49 the Income-tax Authorities determined the annual average surplus under Rule 2 (b) to be Rs. 2,20,338 on the basis of the Company's actuarial valuation.

JUBILEE LIFE ASSURANCE CO., LTD.

Revenue Account for the year ended 31st December 1949

Life Fund as at 1st January 1949		Rs. 1,67,00,225	Claims by death	Rs. 5,93,600	
Single Premium	Rs. 64,600		,, ,, maturity	8,26,400	Rs. 14,20,000
First year's premium	4,53,900				
Renewal premium	26,69,200	31,87,700	Surrenders		1,30,400
	Rs. 10,20,800				
Interest					
Less: Tax deducted at source	2,25,000	7,95,800			
Fines and Fees		1,285			
Profit on Sale of Securities		24,265			
			Expenses of management		
			Staff Salaries	Rs. 5,52,600	
			Commission to Agents	2,95,600	
			Printing and Stationery	29,225	
			Postage and telegram	16,175	
			Medical Fees	16,500	
			Directors' Fees	14,800	
			Audit Fee	4,000	
			Actuary's Fees	2,500	
			Miscellaneous	12,200	9,43,600
			Income tax and Super-tax		52,500
			Life Fund as at 31st December 1949		1,81,62,775
		Rs 2,07,09,275			Rs. 2,07,09,275

Analysis of 1st year's premium			Analysis of Interest A/c.		
5 Years Policy	Rs. 58,400		Interest on Securities (gross)	Rs. 7,20,000	
8 ,, ,,	44,600		Less: Income-tax deducted	2,25,000	Rs 4,95,000
10 ,, ,,	56,900				
15 ,, ,,	66,200		Other Interests		3,00,800
20 ,, ,,	1,07,300				
25 ,, ,,	1,20,500				Rs. 7,95,800
	Rs. 4,53,900				

ANSWER

Computation of total income in terms of Rule 2 (a).

Interest on Securities (gross)			Rs.	7,20,000
Other Interest				3,00,800
Fines and Fees				1,285
			Rs.	10,22,085
			Rs.	
Less Management Expenses				
Re: Single Premium Policies	@ 7½% on	64,600	4,845	
Five years Policies	@ 37½% ,,	58,400	21,900	
Eight ,, ,,	@ 60 % ,,	44,600	26,760	
Ten ,, ,,	@ 75 % ,,	56,900	42,675	
Other Policies	@ 90 % ,,	2,94,000	2,64,600	
Renewal Premiums	@ 12 % ,,	26,60,200	3,20,304	6,81,084
		Total income	Rs.	3,41,001

The Company is liable to pay tax on Rs 3,41,001 as the net income determined under Rule 2 (a) is more than annual average of the surplus computed under Rule 2 (b), on the basis of the acturial valuation

Note. - Rs. 6,81,084 only has been deducted from the gross external incomings as the total expenses of the management of the Company (*i.e.*, Rs. 9,43,600) is more than the maximum expenses allowable under Rule 2

CHAPTER IX

HEADS OF INCOME (Continued)
INCOME FROM OTHER SOURCES (Section 12).

§1—Scope of the Section—Tax is payable under this head by an assessee in respect of income, profits, and gains of every kind which may be included in his total income and which is not included under the head 'salaries', 'interest on securities', 'income from house properties' or 'profits and gains of business, profession or vocation'. It is obviously a residuary section, and includes the following kinds of income—dividends from Companies; interest on mortgages, loans, fixed deposits and current accounts; ground rents, mine rents, surface rents and royalties, remittances received by resident wife from her non-resident husband; income from leasehold properties and bustee lands.

Income from licences granted to brick-makers to erect brick kilns upon his land and to take away brick earth for making bricks is assessable under this head. Income from the settlement of the right to collect the particular kind of earth in a particular area during a particular season for the purpose of extracting Saltpetre, where it is of a recurring nature is similar to rent and royalties from the letting of coal and other minerals and is liable to be taxed as income from other sources. Income from dramatic troupe maintained by an assessee (other than a hobby) is assessable under this head. Income from Treasury Bills are also assessable under this head.

Income, profits and gains chargeable under this head is computed after making allowance for an expenditure incurred solely for the purpose of earning such income. It must be incurred in the year in respect of which the income, profits and gains are assessable. Capital expenditure and personal expenses of the assessee are, however, not allowed to be deducted under this head. This expenditure is also not admissible in respect of any salary or interest chargeable under the Act, which is payable outside India, unless tax has been paid or deducted at source, except in the case of public loans issued before 1st April 1938.

§2—Dividends from Companies.

(a) **Definition [Section 2 (6A)]**—For the purposes of Indian Income tax dividend includes several classes of distribution which are not regarded as dividends for the purposes of other Acts In addition to dividends declared by a Company as such, the following kinds of advantages received by shareholders from Companies are liable to Indian Income-tax :— (i) Distribution of accumulated profits, excluding capital gains arising between 1.4.46 and 31.3.48 capitalised or not, by way of releasing of all or any part of the assets of the company. It may be distributed in cash or in the shape of chattels and bonus shares of the same company or of another company. (ii) Distribution of debentures to the extent to which the company possesses accumulated profits excluding capital gains arising between 1.4.46 and 31.3.48 The question whether the distribution entails the release of any assets of the company or not, does not arise in this case. (iii) Distribution of accumulated profits excluding capital gains arising between 1.4.46 and

31.3.48 on the liquidation of the company. It will be included for the purposes of taxation only if the accumulated profits arose within six years of liquidation. (iv) Distribution of accumulated profits excluding capital gains arising between 1.4.46 and 31.3.48 by way of the reduction of the ordinary capital. The object of this clause is to prevent the distribution of profits in the guise of reduction of capital and thus to allow the Shareholders to escape Super-tax.

In view of war conditions, a Company did not pay any dividend in cash to its shareholders but issued to them deposit certificates for equivalent amount payable after a certain date with interest. It was held that as there had neither been a release of assets of the Company nor a distribution of the debentures and that as the deposit certificates were something like post-dated cheques or promissory notes, the sum represented by the deposit certificates were, therefore, not liable to be taxed as dividends.

Although the definition includes certain categories of capital receipts as income liable to tax, it does not affect in any way the taxability, in the hands of the Shareholders, of the dividends paid by the company from sources of income not liable to tax, e.g. from agricultural income or from tax-free securities. Consequently the agricultural portion of tea dividends is treated as " No income " in the hands of the shareholders.

Following the Privy Council decision in the case of Raja Kamakshya Narain Singh wherein it was decided that interest on arrears of agricultural rent was not " Agricultural Income ", the department has changed its views regarding taxibility of tea dividends in the hands of shareholders. It is now argued that the immediate and effective source of a dividend being the profit fund of a Company, and a profit fund not being land, the dividend cannot be regarded as anything but non-agricultural income. From the assessment year 1949-50 the dividend is, therefore, being treated as an independent source of income from investments wholly assessable under Section 12.

(b) **Computation of gross dividend.** [**Section 16(2)**]—Dividends shall be deemed to be the income of the year in which they are paid, credited or distributed and shall be increased proportionately by the amount of income-tax (but not super-tax) applicable to the total income of the Company for the year in which it is paid, credited or distributed. If a dividend is paid on 15th April 1947 then it should be deemed to be the income of the year 1947-48 and the dividend should be grossed up at the rate of income-tax applicable to the total income of the paying company on the date of payment. All dividends are treated as taxed at source in the hands of the Company, even when they are paid " free of tax " as such they should proportionately be increased by the amount of income-tax paid by the Company in respect thereof. The amount of dividend received by a shareholder is always " net " and it should be grossed up as follows :—

$$\text{Gross dividend} = \frac{\text{Net dividend}}{1-RP}$$ where 'R' represents the applicable rate of income-tax in pies per Rupee and 'P' represents the percentage of the Company's profits which have borne income-tax.

Any sum by which the net dividend is increased shall be treated as a payment of income-tax on behalf of the shareholders and credit shall be given to them therefor in the assessment. Dividends, therefore, are not exempt from income-tax in the hands of the shareholders even if they are

paid "free of tax" but the full amount of income-tax appropriate to the dividend is deemed to have been paid on behalf of the shareholders. (*See Chap. XIV* §4). All that is necessary in such a case is to determine the tax payable on the total income of the shareholder and to give him credit for the tax thus deemed to have been paid on his behalf by the Company, any difference being payable by or refundable to him.

Illustration 25.—Sri Provat Kamal Pal received the following dividends during the year ended 31st March 1948. Find out his total income of the year and tax paid at source in respect of the dividends.

(1) Dividend for the year ended 31st December 1946 declared on 10th April 1947 payable on or after 15th idem, on 2200 Ordinary Shares of Ballavpur Saw Mills Ltd. at Rs. 5 per share—Rs. 11,000 (The Company paid income-tax on 100% of its profits).

(2) Final dividend for the year ended 31st December 1946 declared and paid on the 27th June 1947 on 700 Ordinary Shares of the Begampur Tea Estates Ltd. at Rs. 10 per share—Rs. 7,000 (The Company paid income-tax on 40% of its profits, balance being agricultural).

ANSWER

(1) Ballavpur Saw Mills Ltd.:—

Gross dividend = $\frac{\text{Rs. } 11{,}000}{1-\left(\frac{100}{100}\times\frac{60}{192}\right)}$ = Rs. 16,000

Taxable dividend = Rs. 16,000

Amount of Income-tax paid at source by the Company on Rs. 16,000 @ 60 pies per Rupee = Rs. 5,000

(2) Begampur Tea Estates Ltd.:—

Gross dividend = $\frac{\text{Rs. } 7{,}000}{1-\left(\frac{40}{100}\times\frac{60}{192}\right)}$ = Rs. 8,000

Taxable dividend = 40% of Rs. 8,000 = Rs. 3,200

Agricultural Income = 60% of Rs. 8,000 = Rs. 4,800

Amount of Income-tax paid at source by the Company on Rs. 3,200 @ 60 pies per Rupee = Rs. 1,000

Statement of total income for the year ended 31st March 1948.

	Taxable Amount.	Income-tax paid at source.
Ballavpur Saw Mills Ltd.	Rs. 16,000	Rs. 5,000
Begampur Tea Estates Ltd.	3,200	1,000
Total Income	Rs. 19,200	Rs. 6,000

Illustration 26.—Sri Lalit Kumar Law received the following dividends during the year ended 31st March 1950. Find out his total income of the year and tax paid at source in respect of the dividends.

(1) Final dividend for the year ended 31st December 1948 declared and paid on the 27th June 1949 on 2,000 Ordinary Shares of the

Blackburn Tea Estates Ltd. at Rs. 7 per share—Rs. 14,000. (The Company paid income-tax on 40% of its profits at 60 pies per Rupee, the remaining 60% of the profits was treated as agricultural).

(2) Final dividend for the year ended 31st March 1949 declared and paid on 30th September 1949 on 550 Ordinary Shares of Bahadurpur Electric Supply Co., Ltd. at Rs. 2 per share—Rs. 1,100. (The Company paid income-tax on 100% of its profits at 60 pies per Rupee).

ANSWER

(1) Blackburn Tea Estates Ltd.

$$\text{Gross dividend} = \frac{\text{Rs. } 14{,}000}{1 - \left(\frac{40}{100} \times \frac{60}{192}\right)} = \text{Rs. } 16{,}000$$

Income-tax paid at source by the Company on 40% of Rs. 16,000, i.e. Rs. 6,400 @ 60 pies per Rupee = Rs. 2,000

(2) Bahadur Electric Supply Co., Ltd.

$$\text{Gross dividend} = \frac{\text{Rs. } 1{,}100}{1\left(\frac{100}{100} \times \frac{60}{192}\right)} = \text{Rs. } 1{,}600$$

Income-tax paid at source by the Company on Rs. 1,600 @ 60 pies per Rupee = Rs. 500

Statement of total income for the year ended 31st March 1950.

	Taxable Amount.	Income-tax paid at source.
Blackburn Tea Estates Ltd.	Rs. 16,000	Rs. 2,000
Bahadurpur Electric Supply Co. Ltd.	1,600	500
Total Income	Rs. 17,600	Rs. 2,500

(c) **Certificate of Tax paid by the Company (Section 20).**—The principal Officer of every Company shall at the time of distribution of dividends furnish to every shareholder a certificate to the effect that the Company has paid or will pay income-tax on the profits which are being distributed. It often happens that the holders of shares authorise their Bankers to collect dividend on their behalf. When they do so, it is the practice of the person distributing the dividend to issue certificates in the name of the 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 shareholder for whom dividends are collected by his Banker to produce the certificate. The Income-tax Officer in such cases shall accept a certificate from a responsible Officer of the Bank and act upon such certificate as if it were a certificate issued by the Company.

§3—Annuities.—The Income-tax Act does not define what is an annuity In the ordinary sense it means the purchase of an income involving conversion of capital into a recurring income. Annuities payable by employers to their employees or dependants of ex-employees are taxable under the head

" salaries ". But annuities payable under a deed of separation to a wife or accruing under a family arrangement or by way of bequests under a Will are assessable under this residuary section and even when the payments are made on a monthly basis, no income-tax is deductible at source.

Annuities may be purchased under a contract with a Life Assurance Company. In case of a terminable annuity, the annuitant gets back his capital by instalments along with a certain sum of interest. Such interest would of course attract tax under this head but the capital portion of the annuity would not be liable to tax. To explain, suppose 'A' pays ten annual premia of say Rs. 92/- in consideration of an annuity of Rs. 100/- per annum for ten years commencing on the 56th year of his life; in case of death occurring before 65th year of his life, the remaining annuities are payable to his heir. The interest portion of this annuity as certified by the Company would be liable to tax in the hands of the recipient, the capital portion being outside the scope of the Act.

But in the case of an annuity payable whole life, the capital nature of the purchase price vanishes. The sum receivable by the whole life annuitant would have no relation at all to the premia paid by him earlier. Consequently such a contract cannot be treated as identical to an investment producing a return of capital originally invested. The entire amount of the whole life annuity under the circumstances, would be liable to tax. To explain, suppose "B" pays 15 annual premia of say Rs. 90/- in consideration of an annuity of Rs. 100/- per annum, payable whole life on attaining 50th year of his life and ceasing with his death. As his span of life is not known to the Company the annuity may cease at the end of five yeas or may be continued for 25 years. The entire amount of the annuity in this case would be liable to tax as the capital nature of the repayment cannot be established. In every case therefore the taxability of an annuity depends on whether it is a return of capital by instalments or otherwise.

§4—Bank interest—Interest on current account or on Fixed Deposits with a Bank is assessable under this head. If the assessee maintain more than one account then the total amount of interest should be taxed. If any account is overdrawn, the debit interest should be set off against the credit interest and the net amount should be taxed. In the event of an overdraft being created from purchase of shares and securities then the debit interest should be set off against the income from the relative shares and securities.

Interest on deposits in the Post Office Saving Bank is treated as " No income " and should be excluded from the computation of total income.

CHAPTER X

Computation of total income and the rate of tax.

§1—Previous year [Section 2 (11)]—So far we have discussed how the income is computed under different heads of income, we shall now discuss the period in relation to which the income is ascertained. The tax is payable in respect of the total income of the ' previous year,' the meaning of which is thus of considerable importance. Usually it means the fiscal year i.e. the 12 months ending on the 31st March next preceding the year for which the assessment is to be made. But if the accounts are made up to a date within the said 12 months in respect of a year ending on any date other than 31st March, the assessee can adopt that as his ' previous year.' To illustrate, income of the year ended 31st March 1948 is assessable in 1948-49; if the books of account have been closed on say 31st December 1947 then income for the year ended 31st December 1947 is assessable in 1948-49. Moreover an assessee has the option to have separate previous years for each separate source of income, i.e., he can choose his previous year for his income from ' business ' as ending on 31st December, and for his income from ' interest on securities ' as ending on 31st March. But once the option has been exercised he cannot change it without the consent of the Income-tax Officer and upon such conditions as the latter may think fit. Ordinarily the Income-tax Officer will not permit the change of the previous year unless he is satisfied that it is sought on substantial grounds other than the avoidance of the tax.

In the case of certain communities whose commercial year is not necessarily an English Calender year but is a period which expressed in Calender months varies from year to year and in one year may be slightly over and in another slightly under 12 months. In some cases the Commercial year may even terminate in the month of April. To minimise the difficulties referred to above the Commissioners of Income-tax have been authorised to determine as the ' previous year ' in the case of any person, or business,

(a) a commercial year consisting of not less than 11 months and not more than 13 months,

(b) a commercial year ending after the fiscal year but not later than 30th April.

In the case of a business, profession or vocation newly set up in the financial year preceding the year for which the assessment is to be made, the ' previous year ' is the period from the setting up of the business, profession or vocation to the 31st day of March following or if the accounts of the assessee are made up to some other date than the 31st day of March, then at the option of the assessee the period from the date of the setting up of the business, profession or vocation to this other date. If however this other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March it will be deemed that there was no ' previous year.'

To illustrate, if a business is set up on 1st July 1948 and the accounts are made up to 30th June 1949, the assessee can choose to have the year ended 30th June as his ' previous year ' and in such circumstances there will be deemed to have been no ' previous year ' for assessment for the year

1949-50, the profits for the year ended 30th June 1949 being taken as profits of the ' previous year ' for assessment for the year 1950-51. If, however, the assesse elect the calender year to be taken as ' previous year ' the profits for the period 1st July 1948 to 31st December 1948 will be taken as the profits of the ' previous year ' for assessment for 1949-50. If the assessee makes no choice the ' previous year ' for 1949-50 will be 1st July 1948 to 31st March 1949.

When the assessee is a partner of a firm, the ' previous year ' in respect of his share in the firm shall be ' previous year ' of the firm itself. But in respect of his other sources of income he can have a separate ' previous year.'

Illustration 27

Assessment Year	Corresponding Accounting Period Ended on					
	Financial Year	Calender Year	Ramnavami Year	Bengali Year	Dewali Year	Dewali Gujrati
1939-40	31-3-39	31-12-38	28-3-39	14-4-39	22-10-38	23-10-38
1940-41	31-3-40	31 12-39	15-4-40	13-4-40	10-11-39	11-11-39
1941-42	31-3-41	31-12-40	25-4-41	13-4-41	30-10-40	31-10-40
1942-43	31-3-42	31-12-41	5-3-42	13-4-42	19-10-41	20-10-41
1943-44	31-3-43	31-12-42	13-4-43	14-4-43	7-11-42	8-11-42
1944-45	31-3-44	31-12-43	1 4-44	13-4-44	28-10-43	29-10-43
1945-46	31-3-45	31-12-44	20-4-45	13-4-45	16-10-44	17-10-44
1946-47	31-3-46	31-12-45	10-4-46	13-4-46	4-11-45	5-11-45
1947-48	31-3-47	31-12-46	29-3-47	14-4-47	24-10-46	25-10-46
1948-49	31-3-48	31-12-47	17-4-48	13-4-48	11-11-47	12-11-47
1949-50	31-3-49	31-12-48	7-4-49	13-4-49	31-10-48	1-11-48
1950-51	31-3-50	31-12-49	28 3-50	13-4-50	21-10-49	22-10-49

Assessment Year	Corresponding Accounting Period Ended on					
	Akshoya Tritia	Rathajatra Year	Mahajani Year	Bijoya Dashami	Hijri Year	Basant Pancham
1939-40	21-4-39	28-6-38	3-10-38	4-10-38	20- 2-39	24-1-39
1940-41	9-5-40	18-6-39	21-10-39	22-10-39	9- 2-40	12-2-40
1941-42	29-4-41	6-7-40	9-10-40	10 10-40	28- 1-41	31-1-41
1942-43	17-4-42	25-6-41	29- 9-41	30- 9-41	18- 1-42	20-1-42
1943-44	6-5-43	14-7-42	18-10-42	19-10-42	7- 1-43	8-2-43
1944-45	25-4-44	3-7-43	8-10-43	9-10-43	28-12-43	28-1-44
1945-46	14-5-45	22-6-44	26- 9-44	27- 9-44	16-12-44	18-1-45
1946-47	3-5-46	11-7-45	15-10-45	16-10-45	6-12-45	6-2-46
1947-48	22-4-47	29-6-46	4-10-46	5-10-46	25-11-46	27-1-47
1948-49	11-5-48	19-6-47	23-10-47	24-10-47	14-11-47	14-2-48
1949-50	1-5-49	8-7-48	11-10-48	12-10-48	3-11-48	3-2-49
1950-51	20-4-50	28-6-49	30-9-49	1-10-49	24-10-49	23-1-50

§2—Method of Accounting (Section 13)—Profits and gains of business, profession or vocation and income from ' other sources ' shall be computed in accordance with the method of accounting regularly followed by the assessee. No uniform method of accounting is prescribed for all tax-payers alike. Every assessee may, so far as possible, adopt such form and system of accounting as is best suited for his own purpose. Broadly speaking there are two main systems of keeping accounts. 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 ascertain his profits on this system. If however he does so the difference in the value of his opening and closing stocks must be taken into account when computing the year's profits. Secondly, the mercantile accounting system under which a profit and loss account is maintained and a comparison is made of the value of opening and closing stocks. Under this latter system entries are recorded in the accounts on the date not of receipt or disbursement of money but on the date of pecuniary transactions irrespective of the date of payment.

The method of accounting regularly followed by an assessee for the purposes of computing income from business, profession, or vocation or other sources should be followed for determining his profits for income-tax purposes. It is a practice among certain merchants to prepare their accounts on the basis of the mercantile accounting system in respect of transaction between themselves and members of their own community, but on the basis of cash payments in the case of transactions between themselves and other customers. Provided that the system is continuously employed and if taking one year with another the full income is shown on a consistent basis, it should be followed for income-tax purposes. Again there are cases where various branches of a business are only closed once in three or five years and where the account of the branches are not annually incorporated in the head-quarter's business account. 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.

Where no method of accounting has regularly been followed or where the method followed is such that in the opinion of the Income-tax Officer, income, profits or gains cannot properly be deduced therefrom, then the computation shall be made on such basis as the Income-tax Officer may think fit. The computation should, of course, be based on reasonable materials though the estimate may only be a rough one.

§3—**Total income**—Under the Indian Income-tax Act, tax is levied in respect of the total income of the previous year. The ' total income ' determines the rate or rates of tax applicable to successive slices of income though certain parts thereof may be exempt on one ground or another i.e. interest on tax-free securities. premia paid for life assurance etc. Before an item can be included in ' total income ' it must be in the nature of income, profits or gains. Consequently total income does not include any item which is specially exempt from tax. But it should include in addition to income on which tax is payable by the assessee directly, items taxed at source on his behalf as also items of income which really belong to him though nominally to others (i.e. income of wife, minor children, etc.). We have discussed earlier in detail the different classes of income which are not liable to tax or are only partially liable. Total income being so determined the assessee's liability to tax and the rate at which he should pay are fixed by the annual Finance Act.

§4—**Set off and carry forward of loss (Section 24)**—In computing the total income of an assessee, loss under any head of income should be set off against income from any other head. To illustrate. if there be any minus income say under property, it can be set off against the plus income say under

interest on securities. If the resultant figure is still minus, the assessment should be at nil.

Different businesses do not constitute different heads under the Income-tax Act. All business wherever carried on constitute one head and in order to determine what are the profits and gains of "business" under Section 10, an assessee is entitled to show all his profits and set off against those profits losses incured by him under the same head. Losses incurred in a business, profession or vocation, may, if they cannot be set off against income from other heads of the same year, be carried forward and set off against the profits and gains, if any, of the assessee from the same business, profession, or vocation of the following year. It should be noted however, that losses which have been brought forward from the previous year cannot be set off against any other source of income of the following year or against income from any other business, profession or vocation. They can only be set off against income from the same business, profession or vocation. Consequently, if that particular business, profession or vocation has been discontinued, the right to set off the loss, which has been brought forward from the previous year, will automatically be forfeited. The period of carrying forward the losses is restricted to six years but in the transitional period it will gradually be extended as follows :—

Col. I. Profits of the accounting period ended on	Col. II. Loss determined in the assessment year	Col. III. Assessments against which the loss in column II can be set off
31st March 1939	1939-40	1940-41
31st March 1940	1940-41	1941-42, 1942-43
31st March 1941	1941-42	1942-43, 1943-44 1944-45
31st March 1942	1942-43	1943-44, 1944-45, 1945-46, 1946-47
31st March 1943	1943-44	1944-45, 1945-46, 1946-47, 1947-48, 1948-49
31st March 1944	1944-45	1945-46, 1946-47, 1947-48, 1948-49, 1949-50, 1950-51

Although business loss can be carried forward for six years, unabsorbed depreciation can be carried forward for any number of years till it is fully written off. Consequently if business loss has been arrived at say, Rs. 1,00,000 after charging depreciation say, for Rs. 30,000 then Rs. 70,000 will be carried forward for six years while Rs. 30,000 will be carried forward for more than six years until it can fully be written off against business income of the subsequent years. Provisions regarding carrying forward of losses incurred by registered firms and unregistered firms have been discussed in detail in *Chapter IV* § 5. Where however, a change has occurred in the constitution of a firm or where there has been a succession to a business, profession, or vocation, the person actually incurring the loss is entitled to set off his share of loss, provided the firm is a registered one, against his income from other sources for the same year, but he is not entitled to carry forward the loss as he will no longer have any income from the same busi-

ness, profession or vocation. Partners of unregistered firms can neither set off their share of loss against their income from other sources for the same year nor have they any right to carry forward their share of loss against their business income of subsequent years.

Thus, if a registered partnership consisting of A, B & C, is re-constituted, A retiring and D coming into the partnership, A by leaving the firm forfeits the right to carry forward the loss made by A, B & C, but B, C & D, do not inherit this loss and cannot claim to set off against their shares of future profits, the share of loss incurred by A, B can carry forward his own share of the loss made by A, B & C, while C can carry forward his share. It should be noted of course that A's right to set off his share of loss against his income from other sources for the same year, as distinct from his right of carrying forward and setting off against his income from other sources for subsequent years, remains unaffected. Similarly if E is succeeded in a business by F, and E has incurred losses, he forfeits the carry forward of losses by transferring the business to F, who however cannot claim to set off against his profits the losses incurred by E. E's right to set off loss against his income from other sources for the same year will however remain unaffected.

Illustration 28.—From the following particulars compute A's total income for the different assessment years.

(1) **Accounting year ended 31st March, 1945**—
Income from House Property Rs. 10,000. Loss from cloth business Rs. 15,000. Interest on Fixed Deposit Rs. 3,000.

(2) **Accounting year ended 31st March, 1946**—
Income from House Property Rs. 10,000. Profit from cloth business Rs. 5,000.

(3) **Accounting year ended 31st March, 1947**—
Income from House Property Rs. 12,000. Loss from cloth business Rs. 26,000.

(4) **Accounting year ended 31st March, 1948**—
Income from House Property Rs. 12,000. Loss from cloth business Rs. 10,000.

(5) **Accounting year ended 31st March, 1949**—
Income from House Property Rs. 12,000. Profit from cloth business Rs. 10,000.

(6) **Accounting year ended 31st March, 1950**—
Income from House Property Rs. 12,000. Profit from cloth business Rs. 20,000.

ANSWER

Statement of total income for the year ended 31st March, 1945. (Assessment year 1945-46).

Income from House Property		Rs. 10,000
Interest on Fixed Deposit		3,000
	Rs.	13,000
Loss from Cloth Business		15,000
Loss carried forward to the assessment year 1946-47	Rs.	2,000

Statement of total income for the year ended 31st March, 1946.
(Assessment year 1946-47).

Income from House Property		Rs. 10,000
Profit from Cloth Business	Rs. 5,000	
Less : Loss carried from the assessment year 1945-46	2,000	3,000
Total Income		Rs. 13,000

Statement of total income for the year ended 31st March, 1947.
(Assessment year 1947-48).

Income from House Property	Rs. 12,000
Loss from Cloth Business	26,000
Loss carried forward to the assessment year 1948-49	Rs. 14,000

Statement of total income for the year ended 31st March, 1948.
(Assessment year 1948-49).

Income from House Property	Rs. 12,000
Loss from Cloth Business	10,000
Total Income	Rs. 2,000

Rs. 14,000 being loss carried over from the assessment year 1947-48 will be carried over to the assessment year 1949-50.

Statement of total income for the year ended 31st March, 1949.
(Assessment year 1949-50).

Income from House Property		Rs. 12,000
Profit from Cloth Business	Rs. 10,000	
Less : Loss carried from the assessment year 1947-48	10,000	Nil
Total Income		Rs. 12,000

Rs. 4,000 being loss carried over from the assessment year 1947-48 will be carried over to the assessment year 1950-51.

Statement of total income for the year ended 31st March, 1950.
(Assessment year 1950-51).

Income from House Property		Rs. 12,000
Profit from Cloth Business	Rs. 20,000	
Less : Loss carried from the assessment year 1947-48	4,000	16,000
Total Income		Rs. 28,000

§5—Rate of Income-tax.

Indian Income-tax Act contemplates an annual Finance Act fixing the rate of tax in relation to the total income of the previous year. Income-tax is thus an annual tax not only in the sense that it is imposed annually by the Legislature, but also in the sense that it is annual in its collection. Although it was originally imposed as a temporary tax, the Act regulating its collection have always been so drawn as to expire automatically at the end of the period of such imposition. The period being for a fiscal year only, the Income-tax Act provides that if on the 1st day of April in any year the Finance Act is not passed, the rates imposed by the previous Finance Act or the rates proposed in the pending bill whichever is advantageous to the assessee, should be levied.

The rates are levied under "Slab system" by which successive slices of total income are charged at progressively higher rates, the first slice bearing no tax whatsoever. Different slabs being liable to tax at different rates, an average rate of tax is determined by dividing the amount of tax calculated by the amount of total income, reduced by earned income allowance, if any. Rebate admissible in respect of provident fund contribution, life assurance premia etc., is then calculated at this average rate. The principle adopted is to calculate the tax on the "total income" of the assessee minus earned income allowance, if any, and to levy that portion of it which the taxable income bears to the "total income" minus earned income allowance, if any. The amount of tax payable by a non-resident who is a British subject is determined on the same principle by calculating the amount of tax payable on the "total world income" and levying that portion of it which the taxable income bears to the "total world income". In the case of other non-residents however, income-tax is payable at the maximum rate (the residents being taxed, of course, in the sliding scale).

The rates which are in force with effect from the assessment year 1946-47 are as follows :—

A. In the case of every individual, Hindu Undivided Family, unregistered firm and other Association of persons, not being a case to which paragraphs B or C applies—

	Rate—pies per Rupee		
	Assessment years 1946-47 to 1948-49	Assessment year 1949-50	Assessment year 1950-51
on the 1st Rs 1,500 of total income	Nil	Nil	Nil
,, ,, next ,, 3,500 ,, ,, ,,	12	9	9
,, ,, ,, ,, 5,000 ,, ,, ,,	24	21	21
,, ,, ,, ,, 5,000 ,, ,, ,,	42	42	36
,, ,, balance of total income	60	60	48

Provided that in the assessment year 1950-51—

(i) No income-tax shall be payable on a total income which (before deduction of earned income allowance) is less than Rs. 3,600. If the total income be Rs. 3,500 income-tax payable shall be nil although income-tax on Rs. 2,000 @ 9 pies per Rupee is Rs. 93-12. The limit of Rs. 3,600 is increased to Rs. 7,200 if the assessee is a Hindu Undivided Family, having at least 2 members of more than 18 years old, neither of whom is a lineal descendant of the other.

(ii) The income-tax payable shall not exceed half the amount by which the total income (before deduction of earned income allowance) exceeds Rs. 3,600. If the total income be Rs. 3,700 income-tax payable on Rs. 2,200 @ 9 pies per Rupee is Rs. 193-2 but the amount shall be restricted to half of Rs. 100 i.e. Rs. 50.

(iii) The income-tax payable on the total income as reduced by earned income allowance shall not exceed either,

(a) a sum bearing to half the amount by which the total income (before deduction of earned income allowance) exceeds Rs. 3,600 the same proportion as such reduced total income bears to the unreduced total income, or

(b) the income-tax payable on the income so reduced at the rates specified above, whichever is less.

If the total income (being salary) be Rs. 3,700 income-tax payable on Rs. 2,960 (Rs. 3,700 less earned income allowance of Rs. 740) is Rs. 68-7. (9 pies per Rupee on Rs. 2,960 less Rs. 1,500 i.e. Rs. 1,460), but the amount shall be restricted to $\frac{1}{2}$ of Rs. 100 $\times \frac{2960}{3700}$ or Rs. 40 only.

But, if the total income be Rs. 3,800 then income-tax payable shall be calculated on Rs. 3,040 (Rs. 3,800 less earned income allowance of Rs. 760). Income-tax on Rs. 1,540 (Rs. 3,040 less Rs. 1,500) at 9 pies per Rupee is Rs. 72-3.

B. In the case of every Company—

	Rate—pies per Rupee	
	Assessment years 1946-47 to 1949-50	Assessment year 1950-51
On the whole of total income	60	48

Provided that (for the assessment year 1950-51) in the case of a Company which declares and pays dividends within India or deducts super-tax from dividends paid to non-residents—

(a) Where the total income, as reduced by 6¼ annas in the rupee and by the amount, if any, exempt from income-tax exceeds the amount of any dividends (including dividends payable at a fixed rate) declared in respect of the whole or part of the previous year assessable in 1950-51 and no order has been made under Section 23A(1), a rebate shall be allowed at the rate of one anna per rupee on the amount of such excess.

If the total income of the Company for the year ended 31st March 1950 amounts to Rs. 80,000 and the dividends declared for the relative year amount to Rs. 27,500, then the amount of income-tax payable by the Company for the assessment year 1950-51 shall be calculated as follows :—

Total Income	Rs. 80,000
Less : 6¼ As. per Rupee on total Income	32,500
	Rs. 47,500
Less : Dividends declared	27,500
Undistributed Income	Rs. 20,000

Income-tax @ 48 pies per Rupee on total Income of Rs. 80,000	Rs. 20,000
Less : Rebate @ 12 pies per Rupee on undistributed Income of Rs. 20,000	1,250
Net Income-tax payable	Rs. 18,750

(b) Where the amount of dividends referred to clause (a) above exceeds the total income as reduced by 6¼ annas in the rupee and by the amount, if any, exempt from income-tax, there shall be charged on the total income an additional income-tax equal to the sum, if any, by which the aggregate amount of income-tax actually borne by such excess (hereinafter referred to as " the excess dividend ") fall short of the amount calculated at the rate of 5 annas per rupee on the excess dividend.

For the purpose of (b) above, the aggregate amount of income-tax already borne by the excess dividend shall be determined as follows :—

(1) The excess dividend shall be deemed to be out of the whole or such portion of the undistributed profits of one or more years immediately preceding the previous year as would be just sufficient to cover the amount of the excess dividend and as have not likewise been taken into account to cover an excess dividend of a preceding year;

(2) Such portion of the excess dividend as is deemed to be out of the undistributed profits of each of the said years shall be deemed to have borne tax,—

(i) if an order has been made under Section 23A(1) in respect of the undistributed profits of that year at the rate of 5 annas in the rupee, and

(ii) in respect of any other year, at the rate applicable to the total income of the Company for that year reduced by the rate at which rebate, if any, was allowed on the undistributed profits.

If the total income of the company for the year ended 31st March 1950 amounts to Rs. 80,000 and the dividends declared for the relative year amount to Rs. 62,500, the excess dividend amounting to Rs. 15,000 (Rs. 62,500 less Rs. 47,500) is liable to additional income-tax at the rate of 1 anna in the rupee if the amount of income-tax actually borne by the Company had been at the rate of 4 annas in the rupee. But if the amount of income-tax actually borne by the Company had been at the rate of 5 annas in the rupee, then no additional income-tax is payable by the Company for the assessment year 1950-51.

C. In the case of every Local Authority and in every case in which income-tax is to be charged at the maximum rate—

	Rate—pies per Rupee	
	Assessment years 1946-47 to 1949-50	Assessment year 1950-51
On the whole of total income	60	48

The system of ' deduction of income-tax at source ' as in the case of interest on securities and salaries and of ' taxation at source ' as in the case of dividends, gives rise to much complication in calculating the amount of tax payable when the rates are changed year to year. To avoid numerous adjustments the Finance Acts provide that the amount of income-tax payable by an assessee other than a company in respect of income from ' Salaries, interest on securities and dividends ' should be calculated at the rates levied in the accounting year and in respect of income from the remaining sources, it should be calculated at the rates levied in the assessment year. It is explained fully in the illustrations.

Illustration 29.—Sri Mohini Mohon Mukherjee, a Resident and Ordinarily Resident in the accounting year, had the following sources of income during the year ended 31st March 1950. Calculate the amount of income-tax payable by him.

	Amount of Income	Income-tax deducted
Salaries	Rs. 15,000	Rs. 1,148 7
Income from House Properties	6,000	—
Interest on Fixed Deposits and Current Account	3,000	—
	Rs. 24,000	Rs. 1,148 7

Life Insurance Premia paid Rs. 4,000 Capital value being Rs. 50,000 (without profits).

ANSWER

Income-tax payable on Rs. 21,000 (Rs. 24,000 less earned income allowance @ 20% of Rs. 15,000 i.e., Rs. 3,000) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee		Rs. 164 1	
5,000 @ 21 ,, ,,		546 14	
5,000 @ 42 ,, ,,		1,093 12	
6,000 @ 60 ,, ,,		1,875 0	Rs. 3,679 11

$$\text{Average rate of Income-tax} = \frac{\text{Rs. } 3,679\ 11}{\text{Rs. } 21,000} = 33.6428 \text{ pies per Rupee}$$

Income-tax payable on Rs. 21,000 at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee		Rs. 164 1	
5,000 @ 21 ,, ,,		546 14	
5,000 @ 36 ,,		937 8	
6,000 @ 48 ,, ,,		1,500 0	Rs. 3,148 7

$$\text{Average rate of Income-tax} = \frac{\text{Rs. } 3,148\ 7}{\text{Rs. } 21,000} = 28.7857 \text{ pies per Rupee.}$$

Income-tax payable on salaries less earned income allowance—Rs. 12,000 @ 33.6428 pies per Re.		Rs. 2,102 11
Income-tax payable on Income from House Property and Bank interest—Rs. 9,000 @ 28.7857 pies per Re.		1,349 5
		Rs. 3,452 0

Average rate of Income-tax $= \frac{\text{Rs. } 3,452}{\text{Rs. } 21,000} = 31.5611$ pies per Re.

Less : Rebate in respect of Life Insurance premium of Rs. 4000 @ 31.5611 pies per Re.	Rs.	657 8	
Income-tax deducted at source		1,148 7	1,805 15
Net amount payable			Rs. 1,646 1

Illustration 30.—Mr. N. Nicholson, a non-resident, in the accounting year, had the following sources of income during the year ended 31st March 1950. Calculate the amount of income-tax payable or refundable to him.

	Amount of Income	Income-tax deducted
Interest on Securities	Rs. 6,000	Rs. 1,875
Rupee dividends	4,000	1,250
Interest on Fixed Deposits and Current a/c	2,000	625
	Rs. 12,000	Rs. 3,750
Sterling income £900 —@ 1s. 6d.	12,000	—
Total world Income	Rs. 24,000	Rs. 3,750

ANSWER

Income-tax payable on total world Income of Rs. 24,000 at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee	Rs.	164 1	
5,000 @ 21 ,, ,,		546 14	
5,000 @ 42 ,, ,,		1,093 12	
9,000 @ 60 ,, ,,		2,812 8	Rs. 4,617 3

Average rate of Income-tax $= \frac{\text{Rs. } 4,617\ 3}{\text{Rs. } 24,000} = 36.9375$ pies per Rupee.

Income-tax payable on total world Income of Rs. 24,000 at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee	Rs.	164 1	
5,000 @ 21 ,, ,,		546 14	
5,000 @ 36 ,, ,,		937 8	
9,000 @ 48 ,, ,,		2,250 0	Rs. 3,898 7

Average rate of Income-tax = $\frac{\text{Rs. } 3,898\ 7}{\text{Rs. } 24,000}$ = 31.1875 pies per Rupee.

Income-tax payable on Interest on Securities and Rupee dividends	Rs. 10,000 @ 36.9375 pies per Re.	Rs. 1,923 13
Interest on Fixed Deposits and Current Account	,, 2,000 @ 31.1875 ,, ,, ,,	324 14
		Rs. 2,248 11
Income-tax deducted at source		Rs. 3,750 0
Less: Amount payable		2,248 11
Net amount refundable		Rs. 1,501 5

Note:—Though Income-tax was deducted at source by the payer in respect of the interest on Fixed Deposits and Current Account as Mr. Nicholson was a non-resident, Income-tax payable in respect of it should be calculted at the rates ruling in the year of assessment and not at the rates ruling in the year of payment.

§6—Pay-as-you-earn—[Section (18A)]—The Act was amended in the fiscal year 1944-45 making provision for collection of income-tax and super-tax in respect of those sources of income on which tax is not deductible at source i.e. income from house properties, business, profession, vocation and other sources. If the last assessed total income of an assessee exceed Rs. 6,000 and include any income other than salary and interest on securities, then he will be liable to pay quarterly (15th June, 15th September, 15th December and 15th March), income-tax and super-tax in respect of the " untaxed income ". The tax shall be calculated proportionately at the rates in force in the financial year in which the assessee is required to pay. The year in respect of which the tax is to be paid is his own " previous year " for the next year's assessment. Thus if his year end on the 31st December, he is to pay the tax in advance in 1944-45 on the basis of his last assessed total income, and when the assessment for 1945-46 in respect of his income for the year ended 31st December 1944 is made he will be credited with the advance tax paid in 1944-45. Simple interest at 2% per annum from the date of advance payment to the date of regular assessment is payable by the Government. If any of the sources of income in respect of which the advance payment is demanded by the Department ceases or if the assessee estimate a reduced income from any of those " untaxed sources " then he is at liberty to estimate his own total income for the year and pay tax on that basis. But if his estimate fall short of 80% of tax determined on regular assessment, he is liable to pay a penal interest at 6% per annum on the difference from the first day of January of the financial year in which the tax is paid to the date of regular assessment. No penal interest is, however, payable where the assessee chooses to pay on the basis of his last assessed income even if the tax determined on regular assessment is much greater.

§7—Earned income Allowance [Section 2 (6AA) & 15A]—In the assessment year 1945-46 a distinction was made between incomes that are earned by personal exertion and incomes that are not so earned. Section 7(2) of the Indian Finance Act 1945 provided for an allowance of 1/10th of the 'earned

income' with a maximum of Rs. 2,000 for calculating income-tax but not super-tax, that is, for calculating income-tax ' earned income allowance ' is treated as ' no income ' and as such is excluded from the computation of total income. Since the concession was not allowed for calculating super-tax, the Finance Act 1946 provided lower rates for ' wholly earned incomes ' as distinct from " wholly unearned incomes ". The allowance was raised in the assessment year 1946-47 to 1/5th of the ' earned income ' with a maximum of Rs. 4,000 (*See Illustrations 5 & 9*).

The allowance is admissible to an individual, hindu undivided family, unregistered firm or other association of persons. In the case of a registered firm the allowance is admissible to its active partners only as the tax is not payable by the firm on its own behalf. If an unregistered firm is not liable to pay any tax owing to its income being less than the taxable minimum, any partner who is actively engaged in the conduct of the business would be entitled to the earned income allowance appropriate to his share, in his own assessment. It should, however, be carefully noted that the share of income of a parner of a unregistered firm or a member of an association of persons which is includible in his total income, should be treated as " unearned income " and consequently determined with reference to the total income of the firm or the association and not the income as reduced by the ' earned income allowance ' allowed to the firm or the association.

The allowance is admissible in respect of incomes chargeable under " salaries ", " profits and gains of business, profession or vocation " and " other sources " derived from personal exertion. Pensions or other allowances on account of past services, and ' annual accretion ' in any year to the balance at the credit of an employee participating in a recognised Provident Fund should be treated as " Salary " for the purposes of determining the earned income allowance. In the case of an individual whether the business, profession or vocation is carried on by him or through employees or trustees, the allowance is admissible because for all practical purposes the control and management of the business is in his hands. But no relief will be admissible on the income he receives as a beneficiary where the business is carried on by the trustees. If the individual is a partner in a firm and is actively engaged in the conduct of the business, relief will be allowed on his share of the profits. But if he is not actively engaged in the business, no relief will be allowed. In the case of a hindu undivided family or an unregistered firm the position is similar to that of an individual. An unregistered firm is entitled to the earned income allowance on its total income under the head " business, profession or vocation " irrespective of whether any or all of the partners carry on the business, profession or vocation. Examples of income under the head " other sources " in respect of which earned income allowance is admissible are director's fees, royalty on books received by an author, rent for letting machinery or plant on hire, where the assessee exercise constant supervision.

For the purpose of determining the maximum amount on which rebate in respect of life insurance premium or provident fund contribution is admissible, the " total income " is the amount before deduction of the earned income allowance but the rate at which rebate is to be allowed is the average rate applicable to the total income after deduction of the earned income allowance. (*See Illustration 13*). In deducting income-tax and super-tax during the year ending 31st March 1949 under Section 18(2) an employer should adjust the " earned income allowance " as per *Illustration 31*.

Illustration 31—Mr. J. Osborne was appointed Chief Engineer, Orient Automobiles Ltd., on the 1st April 1948 on a salary of Rs. 3,000 per month with rent free quarters. Calculate the amount of tax deductible by the company after adjustment of the "earned income allowance" and rebate in respect of Life Insurance premium of Rs. 3,000.

ANSWER

Salary for the period 1-4-48 to 31-3-49		Rs. 36,000
Value of rent-free quarters		3,600
		Rs. 39,600

Income-tax payable on Rs. 35,600 (Rs. 39,600 less maximum earned income allowance of Rs. 4,000).

Rs. 1,500	Nil	Nil	
3,500 @ -/1/-	per Rupee.	Rs. 218 12	
5,000 @ -/2/-	,,	625 0	
5,000 @ -/3/6	,,	1,093 12	
20,600 @ -/5/-	,,	6,437 8	Rs. 8,375 0

Average rate of Income-tax $= \frac{\text{Rs. } 8,375}{\text{Rs. } 35,600} = 45.17$ pies per Re.

Less: Rebate in respect of Life Insurance premium of Rs. 3,000 @ 45.17 pies per Rupee.		705 12
		Rs. 7,669 4

Super-tax payable on Rs. 39,600 at "wholly earned income" rates ruling in the assessment year 1948-49.

Rs. 25,000	Nil	Nil	
14,600 @ -/2/-	per Rupee.	Rs. 1,825	1,825 0
	Total tax payable for the year		Rs. 9,494 4
			i.e. Rs. 791 3 per month.

§8—Donation for Charitable purposes (Section 15B)—In the assessment year 1948-49 provision was made for exemption of donations made to an institution or a fund which is established in India for charitable purposes and is approved by the Central Government (*See Appendix E*). The exemption is admissible subject to the following restrictions :—

(1) The total amount of donations paid to one or more approved institutions should not be less than Rs. 250;

(2) The maximum amount of the donation is, however, limited in the case of a Company to 5% and in other cases to 10% of total income as reduced by any portion thereof which is otherwise exempt from tax or Rs. 2,50,000 whichever is less;

(3) In the case of a Company the exemption is applicable only in respect of income-tax but not super-tax. In the case of other assessees the amount of donation is exempt both from income-tax and super-tax but it is includible in the computation of total income for rate purposes;

(4) The amount of relief of tax is restricted to half the amount of donation. The relief should be calculated at the average rate of tax as determined in the case of rebate on Life Insurance premium.

Illustration 32.—From the following return of income of Sri Lalmohon Talapatra for the year ended 31st March 1950 calculate the amount of income-tax payable by him.

Business Profit	Rs. 18,000
Income from House Properties	12,000
	Rs. 30,000

He paid Life Insurance premium of Rs. 5,000, capital value being Rs. 60,000 (without profits). He also paid Rs. 2,500 as donation to an approved institution.

ANSWER

Statement of total income for the year ended 31st March, 1950 (Assessment year 1950-51).

Business Profit	Rs. 18,000
Income from House Properties	12,000
Total Income	Rs. 30,000

Income-tax payable on Rs. 26,400 (Rs. 30,000 less earned income allowance @ 20% of Rs. 18,000 i.e. Rs. 3,600) at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee.		Rs. 164 1	
5,000 @ 21 ,, ,,		546 14	
5,000 @ 36 ,, ,,		937 8	
11,400 @ 48 ,, ,,		2,850 0	Rs. 4,498 7

Average rate of Income-tax = $\frac{\text{Rs. } 4,498\ 7}{\text{Rs. } 26,400}$ = 32.716 pies per Rupee.

Super-tax payable on Rs. 30,000 at the rate ruling in the fiscal year 1950-51.

Rs. 25,000	Nil	Nil	
5,000 @ -/3/- per Rupee.		Rs. 937 8	Rs. 937 8

Average rate of Super-tax = $\frac{\text{Rs. } 937\ 8}{\text{Rs. } 30,000}$ = 6 pies per Rupee.

			Rs. 4,498 7
Less: Rebate in respect of Life Insurance premium of Rs. 5,000 @ 32.716 pies per Re.		Rs. 852 0	
Donations Rs. 2,140 @ 32.716 Re.		364 10	1,216 10
	Carried over		Rs. 3,281 13

	Brought Forward	Rs. 3,281 13
Super-tax payable	Rs. 937 8	
Less: Relief in respect of Donation of Rs. 2,140 @ 6 pies per Rupee	66 14	870 10
	Total tax payable	Rs. 4,152 7

Note:—The maximum amount of Donation on which relief is admission has been calculated as follows :—

Total income	Rs. 30,000
Less: Earned income allowance	3,600
	Rs. 26,400
Less: Life Insurance premium	5,000
	Rs. 21,400
10% being	Rs. 2,140

§9—Exemption from tax of new industrial undertakings (Section 15C)—To encourage rapid industrialisation of the country, the profits of new industrial undertakings are exempted from paying income-tax and super-tax for five years beginning with the assessment year 1949-50 under certain conditions. The undertakings must not be formed by spliting or reconstructing an old business concern but newly set up employing more than 50 persons and producing articles after 31st March 1948 with the help of electrical energy or any other form of energy which is mechanically transmitted and is not directly generated by human agency. The exemption of profits is up to 6% of the Capital employed in the business. The exempted income should, however, be included in the total income for the purpose of determining rates of income-tax and super-tax applicable in respect of other incomes. Dividends paid by a Company out of exempted profits, would also be exempt in the hands of shareholders in the same proportion as the exempted profits bear to the total profits of the company.

CHAPTER XI

SUPER TAX

§1—Scope of Taxation (Section 55)—Super-tax is an additional duty of Income-tax payable by an Individual, Hindu Undivided Family, Company, Local Authority, Unregistered firm and Association of persons. We have discussed in Chapter II the different categories of income which are liable to super-tax or otherwise exempted. Super-tax is payable on a scale of graduated rates just as in the case of Income-tax. It is however payable by Companies and Local Authorities at a flat rate on their entire income.

Although Super-tax is an additional duty of income-tax, Super-tax payable by Companies has got some special characteristics. The Government of India Act, 1935 [*Sections 138, 139 and 311 (2)*] provides that it should be a "Corporation tax", i.e. a tax levied on Companies as such and not an income-tax, though calculated with reference to income and treated as income-tax for the purpose of a Double Taxation Relief claim by a Company. It is entirely a Federal Source of revenue and is excluded from the proceeds of income-tax which are distributed to the Provinces under the Niemyar Award. Though Company super-tax is a Corporation tax it is not allowed as a deduction in computing the profits of the Company for income-tax purposes. It is paid on behalf of the Companies themselves and not on behalf of the share-holders and to which in consequence, the refund provision will not apply. Where dividends are received by a Company from another Company which has itself paid super-tax on its profits, super-tax is charged again in the hands of the recipient Company, except in the case of Investment Trust Companies which are specially exempted in this respect.

Hindu Undivided Families are treated for the purposes of super-tax as separate assessees. Registered firms are not assessed to super-tax but the partners are assessed to it, if any, in relation to their total income including partnership profits. Unregistered firms and other associations of persons are also treated as separate assessees. Where, however, an unregistered firm itself is not assessed to super-tax, its assessable income being less than Rs. 25,000, or where it has been assessed as a registered firm under Section 23(5)(b) super-tax is payable by each partner of the firm individually on his share and not by the firm. Similarly, members of an association of persons will be liable to super-tax on the portions of income which they are entitled to receive from such an association only if it has not been charged to super-tax.

§2—Rates of Super-tax—Rates of super-tax are fixed annually by the Finance Acts, in relation to the total income of the previous year. The rates which are in force with effect from the assessment year 1946-47 are as follows :—

A. In the case of every Individual, Hindu Undivided Family, Unregistered firm and other Associations of persons not being a case to which paragraphs B, C, & D apply :—

Rates—if income wholly earned.

	Assessment year 1946-47.	Assessment year 1947-48.	Assessment year 1948-49	Assessment year 1949-50
On the first Rs. 25,000 of total income	Nil	Nil	Nil	Nil
,, ,, next 5,000 ,, ,, ,,	2 as. per Re.	2 as. per Re.	2 as. per Re.	2 as. per Re.
,, ,, ,, 5,000 ,, ,, ,,	2 ,, ,,	2½ ,, ,,	2 ,, ,,	2 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	3 ,, ,,	3 ,, ,,	2 ,, ,,	2 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	3 ,, ,,	3 ,, ,,	3 ,, ,,	3 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	4 ,, ,,	4 ,, ,,	3 ,, ,,	3 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	4 ,, ,,	4 ,, ,,	3 ,, ,,	3 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	4 ,, ,,	5 ,, ,,	5 ,, ,,	5 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	5 ,, ,,	5 ,, ,,	5 ,, ,,	5 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	5 ,, ,,	6 ,, ,,	5 ,, ,,	5 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	5 ,, ,,	6 ,, ,,	6 ,, ,,	6 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	5 ,, ,,	7 ,, ,,	6 ,, ,,	6 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	7 ,, ,,	6 ,, ,,	6 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	7 ,, ,,	6½ ,, ,,	6½ ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	8 ,, ,,	6½ ,, ,,	6½ ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	8 ,, ,,	6½ ,, ,,	6½ ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	8 ,, ,,	7 ,, ,,	7 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	9 ,, ,,	7 ,, ,,	7 ,, ,,
,, ,, ,, 10,000 ,, ,, ,,	7 ,, ,,	9 ,, ,,	7 ,, ,,	7 ,, ,,
,, ,, ,, 30,000 ,, ,, ,,	7 ,, ,,	10 ,, ,,	7 ,, ,,	7 ,, ,,
,, ,, ,, 50,000 ,, ,, ,,	8 ,, ,,	10½ ,, ,,	9½ ,, ,,	8 ,, ,,
,, ,, ,, 50,000 ,, ,, ,,	9 ,, ,,	10½ ,, ,,	9½ ,, ,,	8 ,, ,,
,, ,, ,, 1,00,000 ,, ,, ,,	9½ ,, ,,	10½ ,, ,,	10 ,, ,,	8½ ,, ,,
,, ,, ,, 1,50,000 ,, ,, ,,	10 ,, ,,	10½ ,, ,,	10½ ,, ,,	9 ,, ,,
On the balance of total income	10½ ,, ,,	10½ ,, ,,	10½ ,, ,,	9 ,, ,,

Rates—if income wholly unearned.

	Assessment year 1946-47.	Assessment year 1947-48.	Assessment year 1948-49	Assessment year 1949-50
On the first Rs. 25,000 of total income	Nil	Nil	Nil	Nil
,, ,, ,, 5,000 ,, ,, ,,	3 as. per Re.	3 as. per Re.	3 as. per Re.	3 as. per Re.
,, ,, ,, 5,000 ,, ,, ,,	3 ,, ,,	3½ ,, ,,	3 ,, ,,	3 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	4 ,, ,,	4 ,, ,,	3 ,, ,,	3 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	4 ,, ,,	4 ,, ,,	4½ ,, ,,	4½ ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	5 ,, ,,	5 ,, ,,	4½ ,, ,,	4½ ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	5 ,, ,,	5 ,, ,,	4½ ,, ,,	4½ ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	5 ,, ,,	6 ,, ,,	6 ,, ,,	6 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	6 ,, ,,	6 ,, ,,	6 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	7 ,, ,,	6 ,, ,,	6 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	7 ,, ,,	7 ,, ,,	7 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	6 ,, ,,	8 ,, ,,	7 ,, ,,	7 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	7 ,, ,,	8 ,, ,,	7 ,, ,,	7 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	7 ,, ,,	8 ,, ,,	8 ,, ,,	8 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	7 ,, ,,	9 ,, ,,	8 ,, ,,	8 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	7 ,, ,,	9 ,, ,,	8 ,, ,,	8 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	7 ,, ,,	9 ,, ,,	9 ,, ,,	9 ,, ,,
,, ,, ,, 5,000 ,, ,, ,,	7 ,, ,,	10 ,, ,,	9 ,, ,,	9 ,, ,,
,, ,, ,, 10,000 ,, ,, ,,	8 ,, ,,	10 ,, ,,	9 ,, ,,	9 ,, ,,
,, ,, ,, 30,000 ,, ,, ,,	8 ,, ,,	10½ ,, ,,	9 ,, ,,	9 ,, ,,
,, ,, ,, 50,000 ,, ,, ,,	9 ,, ,,	10½ ,, ,,	9½ ,, ,,	9½ ,, ,,
,, ,, ,, 50,000 ,, ,, ,,	9½ ,, ,,	10½ ,, ,,	9½ ,, ,,	9½ ,, ,,
,, ,, ,, 1,00,000 ,, ,, ,,	10 ,, ,,	10½ ,, ,,	10 ,, ,,	10 ,, ,,
,, ,, ,, 1,50,000 ,, ,, ,,	10½ ,, ,,	10½ ,, ,,	10½ ,, ,,	10 ,, ,,
On the balance of total income	10½ ,, ,,	10½ ,, ,,	10½ ,, ,,	10 ,, ,,

In the assessment year 1950-51 the distinction between earned and unearned income was abolished and the rates were fixed as follows :—

	Rate.
On the first Rs. 25,000 of total income	Nil
,, ,, next ,, 15,000 ,, ,, ,,	3 as. per Re.
,, ,, ,, ,, 15,000 ,, ,, ,,	4 as. ,,
,, ,, ,, ,, 15,000 ,, ,, ,,	6 as. ,,
,, ,, ,, ,, 15,000 ,, ,, ,,	7 as. ,,
,, ,, ,, ,, 15,000 ,, ,, ,,	7½ as. ,,
,, ,, ,, ,, 50,000 ,, ,, ,,	8 as. ,,
,, ,, balance of total income	8½ as. ,,

B. In the case of every Local Authority—

	Assessment year 1946-47	Assessment years 1947-48 to 1949-50	Assessment year 1950-51
On the whole of total income	1 a. p. Re.	2 as. p. Re.	2½ as. p. Re.

C. In the case of an Association of persons being a Co-operative Society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies.

	Assessment year 1946-47	Assessment years 1947-48 to 1949-50	Assessment year 1950-51
On the first Rs. 25,000 of the total income	Nil	Nil	Nil
On the balance of total income	1 a. p. Re.	2 as. p. Re.	2½ as. p. Re.

D. In the case of every Company—

Assessment year 1946-47.—The rate was fixed at one anna in the Rupee. To discourage excessive distribution of dividends a sliding scale of additional super-tax was introduced in respect of dividends declared in excess of 5% of the capital of the Company. A rebate at the rate of one anna in the Rupee was provided for Life Insurance Companies which in effect meant that these Companies were not liable to pay super-tax.

Assessment year 1947-48.—The rate was increased to two annas in the Rupee and the sliding scale was still more tightened up to discourage the dissipation of a Company's resources in paying excessive dividends. The Life Insurance Companies continued to pay no super-tax as the rebate was also increased to two annas in the Rupee.

Assessment year 1948-49.—The rate was further increased to three annas in the Rupee with a proviso that a rebate of one anna in the Rupee will be allowed to those Companies which declare their dividends in India and deduct super-tax from dividends payable to non-residents. The sliding rates of additional super-tax were abolished in this year. In the case of Life Insurance Companies the rebate at two annas in the Rupee continued which in effect meant that these Companies were not liable to pay super-tax if they declared their dividends in India and deducted super-tax from dividends payable to non-residents.

Assessment year 1949-50.—The rate was again increased to four annas in the Rupee with a proviso that—

(i) a rebate of three annas in the Rupee will be given to a public company having total income of less than Rs. 25,000 and declaring its dividend in India and deducting super-tax from dividends payable to non-residents;

(ii) a rebate of two annas in the Rupee will be given to a company having total income of more than Rs. 25,000 which declares dividends in India and deducts super-tax from dividends payable to non-residents;

(iii) a rebate of one anna in the Rupee will be given to a public company shares of which are offered for sale in a recognised Stock Exchange and which is not entitled to any rebate under items (i) or (ii).

In addition to the above rebates Life Insurance Companies were allowed a further rebate of two annas in the Rupee.

Assessment year 1950-51.—The rate was further raised to four and half annas in the Rupee. The rebates continued at the old rates which in effect meant four rates of super-tax for Companies as per below—

(i) 1½ annas in the Rupee—A " public " Company (Indian or non-Indian) having total income of less than Rs. 25,000 which declares and pays dividends within the territorial jurisdiction of India excluding the State of Jammu and Kashmir.

Note:—Companies whose total income exceeds Rs. 25,000 but does not exceed Rs. 29,545 will be eligible for the marginal relief. The tax will be Rs. 2,343-12 plus half the amount by which the total income exceeds Rs. 25,000.

(ii) 2½ annas in the Rupee—

(a) A non-" public " Company (Indian or non-Indian) which irrespective of its total income, declares and pays dividends in India.

(b) A " public " Company (Indian or non-Indian) having a total income of more than Rs. 29,545 and which declares and pays dividends in India.

(iii) 3½ annas in the Rupee—Any " public " Company which does not declare and pay dividends in India.

(iv) 4½ annas in the Rupee—Any non-" public " Company which does not declare and distribute dividends in India.

The rebate of two annas in the Rupee allowed to Life Insurance Companies in the preceding year was allowed to continue this year.

§3—Deduction of tax at source (Section 18)—Normally super-tax is levied and collected directly from the assessee. But it should be deducted at source in respect of the following : (a) Salaries —If the estimated total annual salary of an employee exceed Rs. 25,000 the employer should deduct super-tax at the rates ruling in the year of payment. (b) Dividends, interest (excluding interest on securities), rent, royalty, commission, brokerage, etc. payable to a person residing outside India—Super-tax should be deducted at

the direction of and at the rate determined by the Income-tax Authorities but when no such direction is received by the payer from the Authorities it should be deducted at the rate applicable to the amount payable; i.e if the recipient is an ' Individual ' it should be deducted on the excess over Rs. 25,000 of such payments and if the recipient is a " Company " it should be deducted even if the amount payable be one rupee only. (*See Chapter XV.* §1)

The system of " deduction of super-tax at source " as in the case of salaries, gives rise to much complication in calculating the amount of super-tax payable when the rates are changed year to year. To avoid adjustments, the Finance Acts provide that the amount of super-tax payable by an assessee other than a Company in respect of income from " Salaries " on which super-tax has been or might have been deducted under the provisions of Section 18(2) (i.e when it is more than Rs. 25,000) should be calculated at the rates levied in the accounting year and in respect of income from the remaining sources it should be calculated at the rates levied in the assessment year.

Illustration 33.—Calculate the amount of tax payable by an assessee in the following cases assuming that he is Resident and Ordinarily Resident in India.

(a) Accounting year 1-4-46 to 31-3-47

Income from House Property in India	Rs. 35,000
Income from investments in a State Bank not brought into India	15,000
Income from investments in a Building Society in East Africa not brought into India	10,000
	Rs. 60,000

(b) Accounting year 1-4-47 to 31-3-48

Income from House Property in India	Rs. 30,000
Income from investments in a State Bank not brought into India	10,500
Income from investments in a Building Society in East Africa not brought into India	4,500
Income from investments in the State Bank included in the assessment year 1947-48 actually brought into India	15,000
	Rs. 60,000

ANSWER

Accounting year 1-4-46 to 31-3-47
(Assessment year 1947-48).

Income from House Property in India		Rs. 35,000
Income from investments in a State Bank not brought into India		15,000
Income from investments in a Building Society in East Africa not brought into India	Rs. 10,000	
Less: Statutory Allowance	4,500	5,500
Total Income		Rs. 55,500

Income-tax payable on Rs. 55,500 at the rates ruling in the fiscal year 1947-48.

Rs. 1,500	Nil	Nil		
3,500 @ -/1/-	per Rupee	Rs. 218 12		
5,000 @ -/2/-	,, ,,	625 0		
5,000 @ -/3/6	,, ,,	1,093 12		
40,500 @ -/5/-	,, ,,	12,656 4	Rs.	14,593 12

Average rate of Income-tax = $\frac{\text{Rs. } 14,593\ 12}{\text{Rs. } 55,500} = 50.48$ pies per Rupee.

Super-tax payable on Rs. 55,500 at the "wholly unearned income" rates ruling in the fiscal year 1947-48.

Rs. 25,000	Nil	Nil		
5,000 @ -/3/-	per Rupee	Rs. 937 8		
5,000 @ -/3/6	,, ,,	1,093 12		
10,000 @ -/4/-	,, ,,	2,500 0		
10,000 @ -/5/-	,, ,,	3,125 0		
500 @ -/6/-	,, ,,	187 8	Rs.	7,843 12

Average rate of Super-tax = $\frac{\text{Rs. } 7,843\ 12}{\text{Rs. } 55,500} = 27.13$ pies per Rupee.

Income-tax payable on Rs. 40,500 (Rs. 35,000 plus Rs. 5,500) @ 50.48 pies per Rupee	Rs.	10,648 2
Super-tax payable on Rs. 40,500 @ 27.13 pies per Rupee		5,722 12
Total Tax payable	Rs.	16,370 14

Accounting year 1-4-47 to 31-3-48.
(Assessment year 1948-49).

Income from House Property in India		Rs.	30,000
Income from investment in a State Bank not brought into India			10,500
Income from investments in the State Bank included in 1947-48 assessment brought into India			15,000
Income from investments in a Building Society in East Africa not brought into India	Rs. 4,500		
Less: Statutory Allowance	4,500		Nil
Total Income		Rs.	55,500

In terms of Section 17(4)(a) Rs. 55,500 will be taxed at the rate applicable on Rs. 40,500 but as in terms of Section 14(2)(c) Rs. 10,500 being State income not brought into India will not be taxed, Income-tax and Super-tax should be calculated on Rs. 45,000 at the average rate applicable on Rs. 40,500.

Income-tax payable on Rs. 40,500 at the rates ruling in the fiscal year 1948-49.

Rs. 1,500	Nil		Nil
3,500 @ -/1/-	per Rupee	Rs.	218 12
5,000 @ -/2/-	,, ,,		625 0
5,000 @ -/3/6	,, ,,		1,093 12
25,500 @ -/5/-	,, ,,		7,968 12
		Rs.	9,906 4

Average rate of Income-tax = $\frac{\text{Rs. } 9,906\ 4}{\text{Rs. } 40,500}$ = 46.96 pies per Rupee.

Super-tax payable on Rs. 40,500 at the "wholly unearned income" rates ruling in the fiscal year 1948-49.

Rs. 25,000	Nil		Nil
15,000 @ -/3/-	per Rupee	Rs.	2,812 8
500 @ -/4/6	,, ,,		140 10
		Rs.	2,953 2

Average rate of Super-tax = $\frac{\text{Rs. } 2,953\ 2}{\text{Rs. } 40,500}$ = 14 pies per Rupee.

Income-tax payable on Rs. 45,000 @ 46.96 pies per Rupee	Rs.	11,006 4
Super-tax payable on Rs. 45,000 @ 14 pies per Rupee		3,281 4
Total Tax payable in terms of Section 17(4)(a)	Rs.	14,287 8

In terms of Section 17(4)(b) Rs. 55,500 will be taxed at the rate applicable on Rs. 15,000 but as in terms of Section 14(2)(c) Rs. 10,500 will not be taxed, Income-tax and Super-tax should be calculated on Rs. 45,000 at the average rate applicable on Rs. 15,000.

Income-tax payable on Rs. 15,000 at the rates ruling in the fiscal year 1948-49.

Rs. 1,500	Nil		Nil
3,500 @ -/1/-	per Rupee	Rs.	218 12
5,000 @ -/2/-	,, ,,		625 0
5,000 @ -/3/6	,, ,,		1,093 12
		Rs.	1,937 8

Average rate of Income-tax = $\frac{\text{Rs. } 1,937\ 8}{\text{Rs. } 15,000}$ = 24.8 pies per Rupee.

Super-tax payable on Rs. 15,000 at the "wholly unearned income" rates ruling in the fiscal year 1948-49		Nil
Income-tax payable on Rs. 45,000 @ 24.8 pies per Rupee	Rs.	5,812 8
Super-tax payable on Rs. 45,000		Nil
Total Tax payable in terms of Section 17(4)(b)	Rs.	5,812 8

As the total amount of tax payable in terms of Section 17(4)(a) is more than the amount of tax payable in terms of Section 17(4)(b) the assessee will be liable to pay Rs. 14,287-8 for the assessment year 1948-49.

Illustration 34—Mr. P. E. Price of 21 Broad Street, Calcutta, a Resident and Ordinarily Resident in the accounting year, submitted his return of income for the year ended 31st March 1948 as per below. He paid Life Insurance premia for Rs. 5,000, capital value being Rs. 60,000 (without profits). Calculate the amount of tax payable by him.

Sources		Amount of income.	Income-tax paid.
Interest on Securities		Rs. 14,000	Rs. 4,375
Income from House Properties		36,000	—
Rupee Dividends (Gross)		22,000	6,875
Sterling Dividends credited in London Bank Account £2,437-10 @ 1s. 6d.	Rs. 32,500		
Less : Statutory Allowance	4,500	28,000	
Total Income		Rs. 1,00,000	Rs. 11,250

ANSWER

Income-tax payable on Rs. 1,00,000 at the rates ruling in the fiscal year 1948-49.

Rs. 1,500	Nil	Nil	
3,500 @ 12 pies per Rupee		Rs. 218 12	
5,000 @ 24 ,, ,,		625 0	
5,000 @ 42 ,, ,,		1,093 12	
85,000 @ 60 ,, ,,		26,562 8	Rs. 28,500 0

Average rate of Income-tax = $\frac{\text{Rs. } 28,500}{\text{Rs. } 1,00,000}$ = 54.72 pies per Re.

Less: Rebate a/c. Life Insurance Premia of Rs. 5,000 @ 54.72 pies per Rupee	Rs. 1,425	
Income-tax paid at source	11,250	Rs. 12,675 0
		Rs. 15,825 0

Super-tax payable on Rs. 1,00,000 at "wholly unearned income" rates ruling in the fiscal year 1948-49.

Rs. 25,000	Nil	Nil	
15,000 @ -/3/- per Rupee		Rs. 2,812 8	
15,000 @ -/4/6 ,, ,,		4,218 12	
15,000 @ -/6/- ,, ,,		5,625 0	
15,000 @ -/7/- ,, ,,		6,562 8	
15,000 @ -/8/- ,, ,,		7,500 0	Rs. 26,718 12
	Net amount payable		Rs. 42,543 12

Note:—Though sterling dividends were not brought into India, they would be liable to Indian Income-tax (subject to the statutory allowance) as the assessee was Resident and Ordinarily Resident in the Accounting year.

Illustration 35—Mrs. R. Robson of 12 Victoria Road, London, W. 8, a non-resident widow, submitted her return of income for the year ended 31st March 1948 as per below. Calculate the amount of tax payable by her.

Sources	Amount of income	Income-tax paid.
Interest on Securities	Rs. 6,000	Rs. 1,875 0
Rupee Dividends	16,000	5,000 0
Royalty paid by Bihar Coal Co. Ld.	12,000	3,750 0
Interest on Fixed Deposit	1,000	312 8
	Rs. 35,000	Rs. 10,937 8
Sterling Income (Gross) £9,000 @ 1s. 6d.	1,20,000	—
Total World Income	Rs. 1,55,000	Rs. 10,937 8

ANSWER

Income-tax payable on Rs. 1,55,000 at the rates ruling in the fiscal year 1948-49.

Rs. 1,500 Nil	Nil	
3,500 @ 12 pies per Rupee	Rs. 218 12	
5,000 @ 24 ,, ,,	625 0	
5,000 @ 42 ,, ,,	1,093 12	
140,000 @ 60 ,, ,,	43,750 0	Rs. 45,687 8

Average rate of Income-tax = $\frac{\text{Rs. } 45,687\ 8}{\text{Rs. } 1,55,000}$ = 56.5935 pies per Rupee.

Super-tax payable on Rs. 1,55,000 at "wholly unearned income" rates ruling in the fiscal year 1948-49.

Rs. 25,000 Nil	Nil	
15,000 @ -/3/- per Rupee	Rs. 2,812 8	
15,000 @ -/4/6 ,, ,,	4,218 4	
15,000 @ -/6/- ,, ,,	5,625 0	
15,000 @ -/7/- ,, ,,	6,562 8	
15,000 @ -/8/- ,, ,,	7,500 0	
50,000 @ -/9/- ,, ,,	28,125 0	
5,000 @ -/9/6 ,, ,,	2,968 12	Rs. 57,812 0

Average rate of Super-tax = $\frac{\text{Rs. } 57,812\ 0}{\text{Rs. } 1,55,000}$ = 71.6123 pies per Rupee.

Income-tax payable on Rs. 35,000 @ 56.5935 pies per Rupee	Rs. 10,316 8
Super-tax payable on Rs. 35,000 @ 71.6123 ,, ,,	13,054 5
	Rs. 23,370 13
Less: Income-tax paid at source	10,937 8
Net amount payable	Rs. 12,433 5

Illustration 36—Exchange Bank of Asia Ltd., a Sterling Company of 19 Bishopsgate, London, E.C. 2, have several branches in India, Burma, Ceylon, Australia and New Zealand. Its Colombo Branch owns India Government Rupee Securities, the interest of which is paid in India after deduction of income-tax at source. From the following return of income submitted by the Bank calculate its liability.

Return of total income for the year ended 31st December, 1947. (Assessment year 1948-49).

Sources	Amount of income	Income-tax paid
Interest on Securities		
A/c Indian Branches	Rs. 16,00,000	Rs. 5,00,000
Colombo Branch	4,00,000	1,25,000
Income from House Properties	5,00,000	—
Business Profits	27,00,000	—
Rupee Dividends (Gross)	8,00,000	2,50,000
Total Indian Income	Rs. 60,00,000	Rs. 8,75,000
Income arising outside India	90,00,000	—
Total World Income	Rs. 150,00,000	Rs. 8,75,000

ANSWER

As the Bank is controlled and managed in London and its Indian income is less than 50% of its total world income, it will be assessed as a non-Resident Company.

Income-tax payable on its total Indian income of Rs. 60,00,000 @ -/5/- as. per Rupee	Rs. 18,75,000
Less : Income-tax paid at source	8,75,000
	Rs. 10,00,000
Super-tax payable on Rs. 60,00,000 @ -/3/- as. per Re.	11,25,000
Net amount payable	Rs. 21,25,000

Illustration 37—From the following return of income of Sri Tarak Nath Chongdar, determine his liability to tax for the assessment year 1949-50.

Return of income for the year ended 31st March, 1949.

Sources	Amount of income	Income-tax paid
1. Salaries	Rs. 24,000	Rs. 3,500 0
2. Interest on Securities	7,500	2,343 12
3. Income from House Property	19,500	—
4. Dividends (Gross)	6,000	1,875 0
	Rs. 57,000	Rs. 7,718 12

Life Assurance Primum paid Rs. 5,000, Capital value being Rs. 1,20,000 (without profits).

ANSWER

Income-tax payable on Rs. 53,000 (Rs. 57,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1948-49.

Rs. 1,500	Nil		Nil
3,500 @ 12	pies per Re.	Rs.	218 12
5,000 @ 24	,,		625 0
5,000 @ 42	,,		1,093 12
38,000 @ 60	,,		11,875 0
		Rs.	13,812 8

Average rate of Income-tax = $\frac{\text{Rs. } 13,812\ 8}{\text{Rs. } 53,000}$ = 50.037 pies per Rupee.

Income-tax payable on Rs. 53,000 (Rs. 57,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil		Nil
3,500 @ 9	pies per Re.	Rs.	164 1
5,000 @ 21	,,		546 14
5,000 @ 42	,,		1,093 12
38,000 @ 60	,,		11,875 0
		Rs.	13,679 11

Average rate of Income-tax = $\frac{\text{Rs. } 13,679\ 11}{\text{Rs } 53,000}$ = 49.556 pies per Rupee.

Super-tax payable on Rs. 57,000 at the 'wholly earned income' rates ruling in the fiscal year 1949-50.

Rs. 25,000	Nil		Nil
15,000 @ -/2/-	per Rupee	Rs.	1,875 0
15,000 @ -/3/-	,,		2,812 8
2,000 @ -/5/-	,,		625 0
		Rs.	5,312 8

Average rate of Super-tax = $\frac{\text{Rs. } 5,312\ 8}{\text{Rs. } 57,000}$ = 17.894 pies per Rupee.

Super-tax payable on Rs. 57,000 at the 'wholly unearned income' rates ruling in the fiscal year 1949-50.

Rs. 25,000	Nil		Nil
15,000 @ -/3/-	per Rupee	Rs.	2,812 8
15,000 @ -/4/6	,,		4,218 12
2,000 @ -/6/-	,,		750 0
		Rs.	7,781 4

Average rate of Super-tax = $\frac{\text{Rs. } 7,781\ 4}{\text{Rs. } 57,000}$ = 26.21 pies per Rupee.

Income-tax payable on Salaries	Rs. 24,000			
Less: Earned income allowance	4,000			
	Rs. 20,000			
Interest on securities	7,500			
Dividends	6,000			
	Rs. 33,500	@ 50.037 pies per Re.	= Rs.	8,730 6
Income from House Property	Rs. 19,500	@ 49.556 ,, ,,	= Rs.	5,033 0
			Rs.	13,763 6
Less: Amount paid at source	Rs. 7,718 12			
Rebate on Life Assurance premium of Rs. 5,000 @ 49.859* pies per Rupee	1,298 7			9,017 3
			Rs.	4,746 3
Super-tax payable on Salaries	Rs. 24,000	@ 17.894 pies per Re.		2,236 12
Interest on securities	Rs. 7,500			
Income from House Property	19,500			
Dividends	6,000			
	Rs. 33,000	@ 26.21 ,, ,,		4,504 14
		Net amount payable	Rs.	11,487 13

*The average rate has been arrived at as follows:

$$\frac{\text{Rs. } 13,763\ 6}{\text{Rs. } 53,000} = 49.859 \text{ pies per Rupee.}$$

Illustration 38—From the following return of income of Dr. Trilochan Tarafder, determine his liability to tax for the assessment year 1949-50.

Return of income for the year ended 31st March, 1949.

Sources	Amount of income.	Tax deducted.
1. Salaries	Rs. 36,000	Rs. 7,250 0 I. T.
		1,375 0 S. T.
2. Interest on Securities	15,000	4,687 8
3. Income from House Property	41,000	—
4. Professional Income	84,000	—
5. Dividends	24,000	7,500 0
	Rs. 2,00,000	Rs. 20,812 8

Life Assurance Premium paid Rs. 5,000, Capital value being Rs. 1,20,000 (without profits).

ANSWER

Income-tax payable on Rs. 1,96,000 (Rs. 2,00,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1948-49.

Rs. 1,500	Nil		Nil
3,500 @ 12	pies per Rupee	Rs.	218 12
5,000 @ 24	,, ,,		625 0
5,000 @ 42	,, ,,		1,093 12
181,000 @ 60	,, ,,		56,562 8
		Rs.	58,500 0

Average rate of Income-tax $= \frac{\text{Rs. } 58,500}{\text{Rs. } 1,96,000} = 57.306$ pies per Rupee.

Income-tax payable on Rs. 1,96,000 (Rs. 2,00,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil		Nil
3,500 @ 9	pies per Rupee	Rs.	164 1
5,000 @ 12	,, ,,		546 14
5,000 @ 42	,, ,,		1,093 12
181,000 @ 60	,, ,,		56,562 8
		Rs.	58,367 3

Average rate of Income-tax $= \frac{\text{Rs. } 58,367\ 3}{\text{Rs } 1,96,000} = 57.176$ pies per Rupee.

Super-tax payable on Rs. 2,00,000 at the 'wholly earned income' rates ruling in the fiscal year 1948-49.

Rs. 25,000	Nil		Nil
15,000 @ -/2/-	per Rupee	Rs.	1,875 0
15,000 @ -/3/-	,, ,,		2,812 8
15,000 @ -/5/-	,, ,,		4,687 8
15,000 @ -/6/-	,, ,,		5,625 0
15,000 @ -/6/6	,, ,,		6,093 12
50,000 @ -/7/-	,, ,,		21,875 0
50,000 @ -/9/6	,, ,,		29,687 8
		Rs.	72,656 4

Average rate of Super-tax $= \frac{\text{Rs. } 72,656\ 4}{\text{Rs. } 2,00,000} = 69.75$ pies per Rupee.

Super-tax payable on Rs. 2,00,000 at 'wholly earned income' rates ruling in the fiscal year 1949-50.

Rs. 25,000	Nil		Nil
15,000 @ -/2/-	per Rupee	Rs.	1,875 0
15,000 @ -/3/-	,, ,,		2,812 8
15,000 @ -/5/-	,, ,,		4,687 8
15,000 @ -/6/-	,, ,,		5,625 0
15,000 @ -/6/6	,, ,,		6,093 12
50,000 @ -/7/-	,, ,,		21,875 0
50,000 @ -/8/-	,, ,,		25,000 0
		Rs.	67,968 12

Average rate of Super-tax = $\frac{\text{Rs. } 67,968\ 12}{\text{Rs. } 2,00,000}$ = 65.25 pies per Rupee.

Super-tax payable on Rs. 2,00,000 at "wholly unearned income" rates ruling in the fiscal year 1949-50.

Rs. 25,000	Nil		Nil
15,000	@ -/3/- per Rupee	Rs.	2,812 8
15,000	@ -/4/- ,, ,,		4,218 4
15,000	@ -/6/- ,, ,,		5,625 0
15,000	@ -/7/- ,, ,,		6,562 8
15,000	@ -/8/- ,, ,,		7,500 0
50,000	@ -/9/- ,, ,,		28,125 0
50,000	@ -/9/6 ,, ,,		29,687 8
		Rs.	84,530 12

Average rate of Super-tax = $\frac{\text{Rs. } 84,530\ 12}{\text{Rs. } 2,00,000}$ = 81.149 pies per Rupee.

Income-tax payable on Salaries	Rs. 36,000			
Less: Earned income allowance	1,200			
	Rs. 34,800			
Interest on securities	15,000			
Dividends	24,000			
	Rs. 73,800	@ 57.306 pies per Re.	= Rs.	22,027 1
Professional Income	Rs. 84,000			
Less: Earned income allowance	2,800			
	Rs. 81,200			
Income from House property	41,000			
	Rs. 1,22,200	@ 57.176 pies per Re.		36,390 2
			Rs.	58,417 3
Less: Income-tax deducted at source	Rs. 19,437 8			
Rebate on Life Assurance premium of Rs. 5,000 @ 57.225 pies per Rupee	1,490 4			20,927 12
		Carried over	Rs.	37,489 7

			Brought Forward	Rs. 37,489	7
Super-tax payable on Salaries	Rs. 36,000 @ 69.75 p. p. Re.		Rs. 13,078	2	
Professional income	84,000 @ 65.25	,,	28,546	14	
Intt. on Sec.	Rs. 15,000				
Income from House Property	41,000				
Dividends	24,000				
	Rs. 80,000 @ 81.149	,,	33,812	1	
			Rs. 75,437	1	
Less: Super-tax deducted at source			1,375	0	74,062 1
	Net amount payable			Rs.	1,11,551 8

Note:—(1) The maximum amount of earned income allowance, *i.e.* Rs. 4,000 has been apportioned as follows:

$$\text{Salary}—\frac{\text{Rs. } 4{,}000 \times \text{Rs. } 36{,}000}{\text{Rs. } 36{,}000 + \text{Rs. } 84{,}000} = \text{Rs. } 1{,}200$$

$$\text{Professional Income}—\frac{\text{Rs. } 4{,}000 \times \text{Rs. } 84{,}000}{\text{Rs. } 36{,}000 + \text{Rs. } 84{,}000} = 2{,}800$$

(2) The average rate of Income-tax at which rebate on Life Assurance premium has been allowed, has been arrived at as follows:

$$\frac{\text{Rs. } 58{,}417}{\text{Rs. } 1{,}96{,}000} \cdot 3 = 57.225 \text{ pies per Rupee.}$$

Illustration 39—From the following return of income of Dr. Debjibon Dafadar, determine his liability to tax for the assessment year 1950-51.

Return of income for the year ended 31st March, 1950.

Sources	Amount of income.	Tax paid	
Salaries	Rs. 30,000	Rs. 5,242 3	I. T.
		625 0	S. T.
Interest on Securities	8,000	2,500 0	
Income from House Properties	12,000	—	
Professional Income	10,000	—	
Rupee Dividends (Gross)	10,000	3,125 0	
	Rs. 70,000	Rs. 11,492 3	

Life Insurance premium paid Rs. 5,000, Capital value being Rs. 60,000 (without profits).

ANSWER

Income-tax payable on Rs. 66,000 (Rs. 70,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil		Nil		
3,500 @ 9	pies per Rupee	Rs.	164 1		
5,000 @ 21	,, ,,		546 14		
5,000 @ 42	,, ,,		1,093 12		
51,000 @ 60	,, ,,		15,937 8	Rs.	17,742 3

Average rate of Income-tax = $\frac{\text{Rs. } 17,742\ 3}{\text{Rs. } 66,000}$ = 51.613 pies per Rupee.

Income-tax payable on Rs. 66,000 at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil		Nil		
3,500 @ 9	pies per Rupee	Rs.	164 1		
5,000 @ 21	,, ,,		546 14		
5,000 @ 36	,, ,,		937 8		
51,000 @ 48	,, ,,		12,750 0	Rs.	14,398 7

Average rate of Income-tax = $\frac{\text{Rs. } 14,398\ 7}{\text{Rs. } 66,000}$ = 41.886 pies per Rupee.

Super-tax payable on Rs. 70,000 at "wholly earned income" rates ruling in the fiscal year 1949-50.

Rs. 25,000	Nil		Nil		
15,000 @ -/2/-	per Rupee	Rs.	1,875 0		
15,000 @ -/3/-	,, ,,		2,812 8		
15,000 @ -/5/-	,, ,,		4,687 8	Rs.	9,375 0

Average rate of Super-tax = $\frac{\text{Rs. } 9,375}{\text{Rs. } 70,000}$ = 25.714 pies per Rupee.

Super-tax payable on Rs. 70,000 at the rates ruling in the fiscal year 1950-51.

Rs. 25,000	Nil		Nil		
15,000 @ -/3/-	per Rupee	Rs.	2,812 8		
15,000 @ -/4/-	,, ,,		3,750 0		
15,000 @ -/6/-	,, ,,		5,625 0	Rs.	12,187 8

Average rate of Super-tax = $\frac{\text{Rs. } 12,187\ 8}{\text{Rs. } 70,000}$ = 33.428 pies per Rupee.

Income-tax payable				
On Salaries	Rs. 30,000			
Less: Earned income Allowance	3,000			
	Rs. 27,000			
Interest on securities	8,000			
Dividends	10,000			
	Rs. 45,000	@ 51.613 pies per Re.	Rs.	12,096 13
		Carried over	Rs.	12,096 13

Income-tax payable		Brought Forward	Rs. 12,096 13
On Professional income	Rs. 10,000		
Less: Earned income allowance	1,000		
	Rs. 9,000		
Income from House Properties	12,000		
	Rs. 21,000	@ 41,886 pies per Re.	4,581 5
			Rs. 16,678 2
Less: Amount paid at source	Rs. 10,867 3		
Rebate on Life Insurance premium of Rs. 5,000 @ 48.518 pies per Rupee	1,263 8		12,130 11
			Rs. 4,547 7
Super-tax payable			
On Salaries	Rs. 30,000	@ 25.714 pies p. Re.	Rs. 4,017 13
Intt. on securities	Rs. 8,000		
Income from House Properties	12,000		
Professional income	10,000		
Dividends	10,000		
	Rs. 40,000	@ 33.428 ,, ,,	6,964 3
		Rs. 10,982 0	
Less: Super-tax paid at source		625 0	10,357 0
		Total tax payable	Rs. 14,904 7

Note:—(1) The maximum amount of earned income allowance of Rs. 4,000 has been apportioned as follows:—

$$\text{Salary}—\frac{\text{Rs. } 4{,}000 \times 30{,}000}{\text{Rs. } 30{,}000 + 10{,}000} = \text{Rs. } 3{,}000$$

$$\text{Professional income}—\frac{\text{Rs. } 4{,}000 \times 10{,}000}{\text{Rs. } 30{,}000 + 10{,}000} = 1{,}000$$

Rs. 4,000

(2) The average rate of Income-tax at which rebate on Life Insurance Premium has been allowed, has been arrived at as follows:—

$$\frac{\text{Rs. } 16{,}678\ 2}{\text{Rs. } 66{,}000} = 48.518 \text{ pies per Rupee.}$$

Illustration 40—From the following return of income of Sri Arun Chandra Dutt Gupta, determine his liability to tax for the assessment year 1950-51.

Return of income for the year ended 31st March, 1950.

Sources.	Amount of income.	Income-tax paid
Interest on Securities	Rs. 10,000	Rs. 3,125 0
Income from House Properties	25,000	—
Professional income	50,000	—
Dividends	15,000	4,687 8
	Rs. 1,00,000	Rs. 7,812 8

Life Insurance premium paid Rs. 6,000. Capital value being Rs. 75,000 (without profits).

ANSWER

Income-tax payable on Rs. 96,000 (Rs. 1,00,000 less earned income allowance of Rs. 4,000) at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee		Rs. 164 1	
5,000 @ 21 ,, ,, ,,		546 14	
5,000 @ 42 ,, ,, ,,		1,093 12	
81,000 @ 60 ,, ,, ,,		25,312 8	Rs. 27,117 3

Average rate of Income-tax $= \frac{\text{Rs. } 27,117\ 3}{\text{Rs. } 96,000} = 54.234$ pies per Rupee.

Income-tax payable on Rs. 96,000 at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee		Rs. 164 1	
5,000 @ 21 ,, ,, ,,		546 14	
5,000 @ 36 ,, ,, ,,		937 8	
81,000 @ 48 ,, ,, ,,		20,250 0	Rs. 21,898 7

Average rate of Income-tax $= \frac{\text{Rs. } 21,898\ 7}{\text{Rs. } 96,000} = 43.797$ pies per Rupee.

Super-tax payable on Rs. 1,00,000 at the rates ruling in the fiscal year 1950-51.

Rs. 25,000	Nil	Nil	
15,000 @ -/3/- per Rupee		Rs. 2,812 8	
15,000 @ -/4/- ,, ,,		3,750 0	
15,000 @ -/6/- ,, ,,		5,625 0	
15,000 @ -/7/- ,, ,,		6,562 8	
15,000 @ -/7/6 ,, ,,		7,031 4	Rs. 25,781 4

Average rate of Super-tax $= \frac{\text{Rs. } 25,781\ 4}{\text{Rs. } 1,00,000} = 49.5$ pies per Rupee.

Income-tax payable				
On Interest on Securities	Rs. 10,000			
Dividends	15,000			
	Rs. 25,000	@ 54.234 pies per Rupee		Rs. 7,061 12
On Professional income	Rs. 50,000			
Less: Earned income allowance	4,000			
	Rs. 46,000			
Income from House Properties	25,000			
	Rs. 71,000	@ 43.797 ,, ,,		16,195 12
				Rs. 23,257 8
Less: Amount paid at source			Rs. 7,812 8	
Rebate on Life Insurance premium of Rs. 6,000* @ 46.515 pies per Re.			1,453 10	9,266 2
				Rs. 13,991 6
Super-tax payable				
On Interest on Securities	Rs. 10,000			
Income from House Properties	25,000			
Professional income	50,000			
Dividends	15,000			
	Rs. 1,00,000	@ 49.3 pies per Re.		25,781 4
		Total tax payable		Rs. 39,772 10

* The average rate has been arrived at as follows:—

$$\frac{\text{Rs. } 23,257\ 8}{\text{Rs. } 96,000} = 46.515 \text{ pies per Rupee.}$$

CHAPTER XII

ASSESSMENTS AND APPEALS.

§1—Normal Assessment [Section 23(1) & (3)]—Towards the end of April every year the Income-tax Authorities give notice under Section 22(1), through the medium of leading newspapers, to every person having taxable income to submit within 65 days a return of his total income and total world income of the previous year. On publication of this notice all assessees irrespective of their status are under a statutory obligation to submit returns of their total income in the prescribed form obtainable from the Income-tax Office on application. The form of return contains explicit notes for the guidance of the assessees who should study such of the notes as are appropriate to their case. Returns must be signed by the assessee in person or by a person duly authorised to represent the assessee legally and in such a way as will bind his principal. Failure to make a return in response to the general public notice will render an assessee having an income of more than Rs. 3,500 liable to a penalty not exceeding one and half times of the tax payable by him. *(See Chap. XIII § 1).*

In addition to the public notification the Income-tax Authorities issue notice under Section 22(2) to those persons who are already known to have taxable income, requiring them to submit within 35 days, returns of their total income and total world income of the previous year. Date of submission of a return may be extended on reasonable grounds. Failure to make a return in response to this particular notice will render an assessee to be assessed Ex-parte as also to a penalty not exceeding one and half times of the tax payable by him. *(See Chap. XIII § 1).*

If a return has not been submitted within the time prescribed in the notice it may be filed any time before the assessment. There is no statutory bar to an assessee making a return under Section 22(1) even after the expiry of the assessment year. It is not necessary for the Income Tax Officer to issue a notice under Section 34 to regularise such an assessment. At any rate there is nothing to prevent an assessee from submitting and the Department from accepting such a return under Section 22(3). If there is any error or omission in a return furnished, a revised return may be filed any time before the assessment, but the assessee cannot escape the penalty for submitting an original false return.

When the Income-tax Officer is satisfied that a return submitted is correct and complete, he shall assess the income under Section 23(1) and determine the amount of tax payable on the basis of such return. This method should be adopted only in case of those assessees who have more or less an unvariable annual income derived from salaries, interest on securities and house properties where the figure shown in the return can be verified from the employer's annual return, certificates of tax deducted at source and Municipal registers.

When the Income-tax Officer has reason to believe that the return submitted by an assessee is not correct or complete he shall serve a notice on him under Section 23(2) to attend in person or to produce any evidence in support of his return. The Income-tax Officer is also empowered under Section 22(4) to call for any books of accounts or documents as he may require but he cannot ask an assessee to produce books of accounts relating to a period of more

than three years prior to the 'Accounting Year'. Moreover he is not authorised to ask the assessee to prepare accounts which he does not already possess and does not require for his own purpose, all that the Income-tax Officer is authorised, is to call for accounts and documents which are believed to be in existence. To comply with the notices referred to, the assessee need not attend in person and may be represented by a lawyer, auditor, income-tax practitioner or by an employee or relative, authorised by him competent to answer questions and whose statement will of course be binding on him. If on production of the necessary evidence the Income-tax Officer is satisfied, he shall make an assessment under Section 23(3) and determine the amount of tax payable. Failure to produce accounts or documents asked for by the Income-tax Officer, will render an assessee to be assessed Ex-parte, in addition to his being prosecuted and penalised (*See Chap. XIII § 1*).

§2—**Ex-Parte Assessment [Section 23 (4)]**—Where no return has been submitted within 65 days from the date of publication of the general notice, the Income-tax Officer should issue a notice under Section 22(2) to the assessee asking him to file within 35 days a return of his total income and total world income. If a return is not submitted in response to the notice under Section 22(2), the Income-tax Officer shall make an Ex-parte assessment to the best of his judgment. An Ex-parte assessment can also be made where an assessee has failed to comply with the notice for production of books of accounts under Section 22(4) or with a notice for attendance or production of evidence under Section 23(2).

In completing an assessment under Section 23(4) the Income-tax Officer must make what he honestly believes to be a fair estimate of the proper amount of assessment and for this purpose he must be able to take into consideration the local knowledge and repute in regard to the assessee's circumstances and his own knowledge of the previous returns by, and assessment of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate. He must not act dishonestly or vindictively or capriciously because he must exercise his best judgment in the matter.

Although an Ex-parte assessment is more or less a penalty assessment which is invariably in excess of the assessee's actual income, it is intended to prevent the offence being repeated. In the case of a registered firm the Income-tax Officer may even refuse registration or cancel it where already allowed, subject to an opportunity being given to the assessee to explain his default. The refusal or the cancellation of the registration is however subject to appeal to the Appellate Assistant Commissioner.

If, however, the assessee can prove to the satisfaction of the Income-tax Officer within one month of the receipt of the demand notice that he was prevented by sufficient cause from submitting his return of income or that he did not receive the notices issued under Sections 22(4) and 23(2) or that he could not comply with the terms of the notices for reasons beyond his control, then the Income-tax Officer shall cancel the Ex-parte assessment and proceed to make a fresh normal assessment. The Income-tax Officer has no option in the matter and he is bound to cancel the assessment if the assessee can prove that the default was caused unintentionally and owing to circumstances beyond his control.

§3—**Emergency Assessment (Sections 24A, 44A,B,C.)**—Since a notice under Sections 22(1) and (2) cannot be issued before the close of the fiscal year for the purposes of assessing the income of that year, Commercial Travellers,

Touring Theatrical Parties, Temporary Residents or persons about to leave India permanently, can escape tax by departing from the country before the close of the year. To provide for such emergencies the Income-tax Officers are authorised under Section 24A to serve a notice on an assessee requiring him to furnish within seven days a return of his estimated total income for the period from the expiry of the last previous year to the probable date of his departure. The rate applicable in respect of these assessments is the rate in force for the financial year in which the assessment is made.

This section contains an exception to the general rule that assessments are made on the income of the previous year. It should be noted however, that the onus of discovering such assessees and of putting the emergency machinery in motion, is with the Income-tax Authorities. The Act does not place any obligation on those, who intend to leave the country to notify the authorities of their intention to do so.

Sections 44A, B, C, provide for the assessment and collection of tax in case of certain classes of shipping. The procedure is mainly intended to rope in non-resident owners of such vessels from whom the tax would otherwise be irrecoverable. Before departure from any port of India the Master of the ship shall furnish to the Income-tax Officer a statement of the full amount paid or payable to the Master's principal on account of passenger fares and freight on the livestock and goods shipped at the port since the arrival of the ship thereat. The Income-tax Officer shall thereafter assess the income at 5% of the figure furnished. The tax is then levied at the maximum rate applicable at the time of assessment and the ship is not allowed to leave the port until the Collector of Customs is satisfied that the tax has been paid. Any adjustments in respect of the tax paid can however be made in the following year in course of a normal assessment.

§4—Provisional assessment (Section 23B)—To speed up collection of revenue Income Tax Officers were empowered in the assessment year 1949-50 to make provisional assessments on the basis of assessee's own return of income accompanied by accounts and documents, if any, in support thereof. In selecting cases for making provisional assessment, priority was therefore given to old cases in which the net amounts payable were substantial. If on the basis of the return of income and the accounts submitted by an assessee, the Income-tax Officer finds that there will actually be a net demand payable then the provisional assessment is made. No appeal lies against a provisional assessment. Without prejudicing the merits of any issue involved the amount of tax paid on provisional assessment is adjustable in the regular assessment, the difference being payable or refundable to the assessee.

§5—Income escaping assessment (Section 34)—Under certain circumstances the Income-tax Officers are empowered to re-open an assessment if they discover, in consequence of definite information, that the income has escaped assessment. The Section covers four alternatives (i) where the income was not disclosed in the return; (ii) where the income has been under-assessed owing to mistakes in computations including wrong allowances and so forth; (iii) where the income has been assessed at a lower rate of tax than is appropriate; and (iv) where the income has been the subject of excessive refunds or reliefs.

The intention of the Income-tax Officer must properly be notified to the assessee before any action is taken. If it appears at any stage of the proceedings that no income has escaped assessment or been assessed at a lower 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 re-assess the income the assessee should be entitled to have any benefit out of that re-assessment. Still less it is intended that the Income-tax Officer should be invested with wide powers of revision or review merely because he has caused a mistaken impression that certain income has escaped assessment or been assessed at a lower rate. His powers under Section 34 can never be used, therefore, to effect a reduction of tax already levied upon the assessee.

The rate of tax chargeable in respect of re-assessment must be levied at the rate at which it would have been levied had the income not escaped assessment. To illustrate, if the income of the accounting period ended 31-3-46 (assessable in the year 1946-47) which has escaped assessment, be re-assessed in the assessment year say 1948-49, then the tax chargeable on the total re-assessed income should be calculated at the rates levied in the assessment year 1946-47 and not at the rates of the year 1948-49.

All assessments whether under Section 23 or 34 must be completed by the Income-tax Officer within four years from the end of the year in which the income being assessed was first assessable. When, however, an assessee is guilty of wilful concealment or mis-statement of income, this period extends to eight years. To illustrate, normal assessment in respect of the income of the year ended 31-3-46 must be completed by the Income-tax Officer within 31-3-51, but if a source of income deliberately concealed by the assessee is detected then re-assessment can be completed within 31-3-55. The period is on the other hand restricted to one year only, where a non-resident is assessed through an agent under Section 43.

Section 8 of the Income-tax and Business Profits Tax (Amendment) Act, 1948 has drastically recasted this section making a distinction between two categories of assessees, namely those who make a full and fair disclosure of all material facts to the Income-tax Officer and those who do not. In the latter case if the Income-tax Officer satisfies the Commissioner that he has reason to believe that by reason of the assessee's failure to make a full disclosure of his income there has been escapement of tax, he can initiate reassessment proceedings. The period of completing the assessments has been extended and the assessment can now be completed within one year of the service of the notice provided the notice has been served within the time limit. The amendment has been based on the recommendation of the Income-tax Investigation Committee who are of the opinion that the existing law, under which completed assessments cannot be reopened unless the Income-tax Officer actually discovers an under-assessment in consequence of definite information which has come to his possession, does not afford adequate safeguard against loss of public revenue, particularly as such loss arises from the tactics employed by dishonest tax-evaders.

§6—Place of Assessment (Section 64)—With a net work of Income-tax Officers scattered throughout India, it is but logical that there must be some hard and fast method to map out their individual jurisdictions. Ordinarily an Income-tax Officer is empowered to assess any income, profits or gains accruing arising or received within a certain territorial jurisdiction. Consequently an assessee has to be assessed by the Income-tax Officer of the Area within which he ordinarily resides, but if he carries on a business, the assessment should be made by the Officer of the Area within which his principal place of business is situate. If there be any dispute regarding jurisdiction of the

Income-tax Officer, the matter should be settled by the Provincial Commissioner of Income-tax. Where the areas are situate in more than one Province, the matter should be settled by the Central Board of Revenue if the Provincial Commissioners are not in agreement. In all cases of dispute, however the assessee should be given an opportunity of representing his views although these are not necessarily accepted. Under special circumstances the Income-tax Officers are appointed not in relation to the territorial jurisdiction but in relation to certain classes of assessee or certain classes of income. A list of the areas or classes of persons comprised in each Officer's jurisdiction is displayed on the notice board of the Income-tax Officer concerned and if any person is in doubt as regards the Officer to whom he should submit his return of income he may enquire either from the nearest Income-tax Office or from the Provincial Commissioner of Income-tax.

The form of return requires an assessee to state his principal place of business and if he has made a statement he should obviously be bound by it. Where, however, he defaults in submitting a return of his income even though asked to do so under Section 22(2) he is deprived of the right to raise any question about the jurisdiction of the assessing Income-tax Officer.

§7—**Demand Notice and date of payment (Sections 29 & 45)**—In addition to making an assessment, the Income-tax Officer is responsible for recovering all demands resulting from his own order or that of his higher Authorities in an appeal or review or for a penalty imposed. As soon as an assessment is complete, the Income-tax Officer shall serve upon the assessee a demand notice specifying the amount payable by way of tax or penalty. Although the Act does not specify the minimum period to be allowed for payment, the department usually allows 14 days for payment except in cases involving a risk to the Revenue.

A demand must be paid on or before the date specified in the notice but where no date is mentioned the amount should be paid "on or before the first day of the second month following the date of service of the demand notice." Failure to pay the tax or penalty specified in a demand notice by due date will make the person liable to be "deemed to be in default" except where (i) either the person has presented an appeal, or (ii) the assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India. In the former case, if the Income-tax Officer is satisfied that the appeal involves a really contentious issue, he may postpone the collection of the disputed portion of the tax. In the latter case the assessee will not be treated as in default in respect of the proportionate amount of tax applicable to such foreign income so long as the prohibition or restriction is not removed. Intentional non-payment of tax on or before the due date leaves the assessee open to the imposition of a penalty as great as the amount of tax due from him.

Section 9 of the Income-tax and Business Profits Tax (Amendment) Act, 1948 empowers an Income-tax Officer to attach debts due from any person to an assessee who is in default in making payment. Any amount paid by a person in compliance with the Income-tax Officer's order is a sufficient discharge of his liability to the assessee. If the person concerned does not pay the amount to the Income-tax Officer, further proceedings may be taken against him as if the attachment were made by the Collector.

§8—**Appeals (Section 30)**—It is an established rule of law that there cannot be any inherent right of appeal and that the right of appeal must expressly

be given by the Statue. Section 30 of the Income-tax Act specifically provides for the right of appeal under certain circumstances and we shall now deal with them.

(a) **Appeal to Appellate Assistant Commissioner**—Where an assessee denies his liability to be assessed under the Act, he can appeal to the Appellate Assistant Commissioner. Mere filing one's return of income cannot by itself be taken to be an indication of his consent to the assessment as such the assessee has an unqualified right of appeal whether he had questioned his liability to assessment under the Act before the Income-tax Officer or not.

All assessments whether normal or Ex-parte are subject to appeal. If the assessee is of the opinion that the amount of his total income has wrongly been computed by the Income-tax Officer or that the amount of tax payable in relation to his total income has wrongly been calculated he can appeal to the Appellate Assistant Commissioner. Where an Ex-parte assessment has been re-opened under Section 27 and the assessee is not still satisfied, he can appeal against the re-opened assessment.

Under Section 24 the assessee has the right of carrying forward losses to future years. If the Income-tax Officer refuses to determine this loss or wrongly computes it, then the assessee can appeal against the decision of the Income-tax Officer.

Cancellation of registration under Section 23(4) or refusal to register a firm under Section 26(A) or to re-open an Ex-parte assessment under Section 27 is appealable. Similarly orders passed by an Income-tax Officer under Sections 23(A) (1), 25(A), & 26(2) are also appealable.

An appeal can also be filed against orders imposing penalty under Section 28, 44(E) (6), 44(F) (5) or 46(1) as also against any order passed in connection with refund claims submitted under Section 48, 49 or 49F.

An appeal shall ordinarily be presented within 30 days of the receipt of the demand notice relating to the assessment or penalty objected to or of the intimation of the refusal of the Income-tax Officer as the case may be. The Appellate Assistant Commissioner has the discretionary power to extend the period of limitation on reasonable grounds. The appeal must be filed in the prescribed form available from the Income-tax Office and shall be verified in the prescribed manner. Any false statement made in the verification clause is an offence punishable under Section 52 of the Income-tax Act.

(b) **Hearing of Appeals by Appellate Assistant Commissioner (Section 31)**—On receipt of the appeal the Appellate Assistant Commissioner shall fix a date and place for hearing and shall send the notice to the assessee asking for any evidence he may desire. Adjournment can of course be given at his discretion on reasonable grounds. Appeal should not be dismissed for default of appearance but should always be decided under merits. The Assistant Commissioner has the authority to make any enquiry he thinks necessary or to have such enquiries made by the Income-tax Officer. He has also the authority to admit additional grounds of appeal provided the omission was not wilful or unreasonable.

In the case of an appeal against an order of assessment the Assistant Commissioner may confirm, reduce, enhance, annul or set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such enquiries as the Income-tax Officer may consider necessary or the Assistant Commissioner may direct.

In case of an appeal against an order refusing to register a firm under Section 26A or to make a fresh assessment under Section 27, the Assistant Commissioner may confirm such order or cancel it and direct to register the firm or to make a fresh assessment.

In the case of an appeal against an order Section 23A (1), 25(2), 26(2), 48, 49, or 49F the Assistant Commissioner may confirm, cancel, or vary such order.

In the case of an appeal against an order under Section 25A(1) the Assistant Commissioner may confirm or cancel such order and direct the Income-tax Officer to make further enquiry and pass fresh order or to make an assessment in the manner laid down in Section 25A(2).

In the case of an appeal against an order under Section 28, 44E(6), 44F(5), or 46(1) the Assistant Commissioner may confirm, cancel, enhance, or reduce the penalty.

In the case ot appeal against the computation of loss under Section 24 the Assistant Commissioner may confirm or vary such computation.

Although the Assistant Commissioner has the power to enhance an assessment or penalty, he cannot exercise it without giving a reasonable opportunity to the assessee to explain his position. This power of enhancement does not authorise the Assistant Commissioner to go beyond the subject matter of the assessment and assess entirely new sources of income which were not the subject matter of the assessment appealed against. In dealing with an appeal against an assessment under Section 34 the Assistant Commissioner can only deal with that part of the income which had escaped assessment at the original assessment or with an enhancement of rate of tax at the re-assessment. He cannot entertain any argument that involves any reduction of the amount determined at the original assessment.

As the Appellate Assistant Commissioner now performs 'quasi-judicial' functions, the Income-tax Officer is authorised to be represented at the time an appeal is heard. On conclusion of the appeal the Appellate Assistant Commissioner shall communicate his orders to the assessee and also to the Commissioner of Income-tax.

(c) **Appeals to the Appellate Tribunal (Section 33)** -An assessee can lodge an appeal to the Appellate Tribunal within 60 days of the date on which an order by the Appellate Assistant Commissioner under Sections 28 and 31 is communicated to him. The department is also authorised to lodge an appeal to the Appellate Tribunal against any order passed by the Appellate Assistant Commissioner under Section 31. The Appellate Tribunal is empowered to admit an appeal out of time if there is sufficient cause for the delay. The appeal must be filed in the prescribed form with a fee of Rs. 100. The department is however, exempted from paying this fee. After hearing both parties the Appellate Tribunal shall pass an order as it thinks fit and shall communicate its decision to the Assessee as well as to the Commissioner. Orders passed by the Appellate Tribunal shall be final and conclusive unless any question of law arises out of such order.

(d) **Appeals to the High Court (Section 66)**--Should the assessee or the Commissioner be not satisfied with the decision of the Appellate Tribunal, either of them may require the Tribunal to refer the matter to the High Court. But no reference can be made to the High Court on a question of fact in which case the decision of the Tribunal is final and conclusive. The application for a reference to the High Court should be made within 60 days of the date on

which the decision of the Tribunal has been communicated. It must be made in the prescribed form accompanied by a fee of Rs. 100/-. The department is however, exempted from making this deposit. If the Tribunal is of the opinion that a question of law arises out of its order, then it shall within 90 days of the receipt of the application draw up a statement of the case and refer it to the High Court. If on the other hand, the Tribunal consider that a point of law is not involved then it may refuse to state the case. Where a reference is withheld on this ground the applicant may apply to the High Court direct within six months from the date on which he is served with the notice of refusal, to make a reference for a 'mandamus' requiring the Tribunal to state a case. Where such an order has been passed by the High Court, the Tribunal must state a case. These references should be heard by a Bench of not less than two Judges and a copy of the judgment under the Seal of the Court and the signature of the Registrar should be sent to the Appellate Tribunal for disposal in the light of the orders passed by the Court. Costs will be decided at the discretion of the Court. Where as a result of the reference, a refund is due to the assessee it shall be granted along with any interest, the Commissioner may allow unless he decides to appeal to the Supreme Court and intimates the Court of his intention to ask for leave to this effect, within 30 days of the receipt of the Court's order. The refund may then be stayed with the Court's permission until such time as the appeal to the Supreme Court is disposed of.

(e) **Appeals to the Supreme Court (Section 66A)**—An appeal shall lie to the Supreme Court from any judgment of the High Court if the High Court certifies that the question of law involved is one of great importance. Usually the High Court will certify a case where the correct interpretation of the law will benefit not only the parties to the proceedings but also other persons similarly situated. Effect shall be given to the order of the Supreme Court where the judgment of the High Court is varied or reversed with the result that the Commissioner would no longer be able to withhold a refund under any circumstances. The decision of the Supreme Court shall be final and conclusive.

§9—Revisionary Power of the Commissioner of Income-tax (Section 33A)—The Commissioner of Income-tax as administrative head of the department in his Province is authorised to call for the file of any assessee and revise at his discretion, any order passed by an authority sub-ordinate to him. But he shall not pass an order prejudicial to the assessee. The Commissioner shall not also revise any order which is subject to an appeal to the Appellate Authorities or which has been made more than one year ago.

The assessee can also ask the Commissioner to revise an order passed by an authority sub-ordinate to him. With a view to discourage frivolous applications, a fee of Rs. 25/- has been prescribed. On receipt of the application the Commissioner shall call for the records and pass orders as he thinks fit. But he shall not revise any order which is subject to an appeal to the Appellate Authorities. As the Commissioner has expressly been prohibited from making an order prejudicial to the assessee, his decision shall be final and conclusive. No appeal or reference shall lie from his orders.

Section 7 of the Income-tax and Business Profits Tax (Amendment) Act, 1948 empowers the Commissioner to revise within two years any order of the Income-tax Officer which is prejudicial to the Revenue. The assessee has however been given the right of appeal to the Appellate Tribunal against the Commissioner's order of revision in exactly the same manner as he has the right of appeal against the Appellate Assistant Commissioner's order.

CHAPTER XIII

PENALTY AND PROSECUTION.

The Income-tax Act has imposed certain obligations on the assessees, non-compliance of which will render them liable to be penalised and prosecuted. Under certain circumstances the Department is authorised to levy a penalty while in other cases fines and penalties can be levied by a Magistrate in the event of a prosecution being launched.

§1—Penalties leviable by the Department (Section 28)—A notice under Section 22 (1) issued through the medium of press or otherwise, imposes a statutory obligation on all tax-payers to submit returns of their total income, non-compliance of which is punishable with a maximum penalty of one and half times of the Income-tax and Super-tax payable on the total income of the offender. But the penalty cannot be levied if the total income of the assessee is less than Rs. 3,500 or if the assessee is the agent of a non-resident.

Failure to submit a return of income in response to a notice under Section 22(2) or 34 is punishable with a maximum penalty of one and half times of the Income-tax and Super-tax payable on the total income of the offender. But the penalty is restricted to Rs. 25 only, if the total income of the assessee is less than Rs. 3,600.

Failure to produce books of accounts called for by the Income-tax Officer under Section 22(4) or to furnish evidence asked for under Section 23(2) or concealment of income or deliberate mis-statement of actual income in the return submitted, is punishable with a maximum penalty of one and half times the difference between the Income-tax and Super-tax finally found to be payable and that calculated on the basis of the return submitted by the offender. It should be noted in this connection that the correction of return or the submission of a fresh return before the date of final assessment does not condone a deliberate omission or wilful mis-statement made in the original return.

Improper distribution of the profits of a registered firm with the object of returning the income of a partner below the real amount, is punishable with maximum penalty of one and half times the Income-tax which would have been avoided, had the return of income submitted by the partners been accepted.

Penalties are always leviable in addition to the income-tax and super-tax normally payable by the offender. When a penalty has been imposed under Section 28 a notice of demand should be served on the assessee under Section 29 and if he is not satisfied he can appeal within 30 days of the receipt of the demand notice to the Appellate Assistant Commissioner.

In all cases of penalty proceedings under Section 28 the Income-tax Officer must have the previous approval of the Inspecting Assistant Commissioner. Moreover, no order shall be passed unless the assessee or the partner has been given a reasonable opportunity of explaining his position. No prosecution can be instituted in respect of the same facts on which a penalty has been imposed.

Section 25(2) imposes a statutory obligation on persons discontinuing business, profession or vocation to give notice of such discontinuance within

15 days thereof, non-compliance of which is punishable with a maximum penalty of a sum equal and in addition, to the Income-tax and Super-tax finally levied.

Section 44 enacts that where any business, profession or vocation carried on by a firm or Association of persons has been discontinued or dissolved, each partner or member is liable jointly and severally for the tax assessed in addition to his personal assessment, if any.

Section 44E empowers Income-tax Officers to call for certain particulars to examine whether any tax has been avoided by sale of securities and shares with the option of re-buying them. Failure to comply with any of these requisitions will render the assessee liable to an initial penalty up to Rs. 500 plus a further penalty of the like amount for every day of the default after the imposition of the initial penalty.

Section 46(1) empowers the Income-tax Officers to impose a penalty where the tax demanded, has not been paid within the prescribed time and in case of continuous default the penalty may be enhanced from time to time up to the amount of arrear demand.

§2—Penalties leviable on prosecution before a Magistrate (Sections 51 and 52) —The following offences are punishable, on conviction, with a fine of Rs. 10 per day of default.

(1) Failure to deduct and pay tax as required by the provisions relating to deduction of tax at source under Section 18.

(2) Failure to deduct and pay arrears of tax from salary if asked by the Income-tax Officer under Section 46(5).

(3) Failure to furnish certificates of deduction of tax at source as required by Section 18(9).

(4) Failure to furnish certificates of payment of tax in respect of dividends declared by a Company as required by Section 20.

(5) Failure to furnish in due time the following returns :—

(a) Return of persons to whom dividends of more than Rs. 5,000 has been paid.—Section 19A.—Due date 15th June each year.

(b) Return of persons to whom interest of more than Rs. 400/- has been paid—Section 20A—Due date 15th June each year.

(c) Return of employees to whom salary of more than Rs. 1,600 has been paid and the amount of tax deducted in respect thereof—Section 21—Due date 30th April each year.

(d) Return of total income and total world income in compliance with special notice issued under Section 22(2).

(e) Return of members of firms or adult male members of a Hindu Undivided Family or of beneficiaries, etc.—Section 38.

(f) Return of persons to whom rent, interest, commission, royalty, brokerage or annuity of more than Rs. 400/- has been paid—Section 38.

(6) Failure to produce or caused to be produced books of accounts or documents asked for by the Income-tax Officer under Section 22(4).

(7) Failure to grant inspection or to allow copies to be taken in accordance with the provisions of Section 39.

Deliberate mis-statement in the verification clause of any of the forms prescribed in Section 19A, 21, 22, 26(2), 30(3) or 33(3) is punishable on conviction with simple imprisonment which may extend to six months or with a fine up to Rs. 1,000 or with both.

No prosecution can be instituted for any of the above offences without the approval of the Inspecting Assistant Commissioner who is also empowered to compound such offences even after prosecution has been launched.

§3—Judicial proceedings (Section 37)—This section empowers the Income-tax Officer, Appellate Assistant Commissioner, Commissioner and the Appellate Tribunal,

(a) to enforce the attendance of any person and examine him on oath or affirmation,
(b) to compel the production of documents, and
(c) to issue commissions for examination of witness.

The above proceedings shall be deemed to be "Judicial proceedings" as covered by Section 193, 196 and 228 of the Penal Code. Scale of diet money and travelling expenses for witnesses, summoned under this Section will be that prescribed for attendance in Civil Courts in the respective provinces.

Although Section 61 permits an assessee to be represented by an Agent, it does not exempt him from being summoned by the Income-tax Officer under this Section, if he considers the assessee's personal attendance necessary. The penalties for disobeying the summons issued under this Section are the same as those for disobeying similar summons issued by a Civil Court. Relevant Sections of the Penal Code are as follows :—

193. Whoever intentionally gives false evidence, in any stage of a judicial proceeding, 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.

196. 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 or fabricated false evidence.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of 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.

§4—Disclosure of information by the Income-tax Authorities (Section 54) — Income-tax returns and statements are confidential as between the assessee and the Income-tax Department, the breach of which is punishable with imprisonment up to six months and a fine at the discretion of the court. The intention of this Section is to encourage the assessee to make a full and true disclosure of all relevant facts within his knowledge, knowing that any statement made by him will not subsequently be used against him. But the particulars may be disclosed to such persons only who act in the execution of the Act itself, as also under certain circumstances provided in the Section. No prosecution shall be instituted under this Section without the previous approval of the Commissioner.

CHAPTER XIV

REFUND AND RELIEFS.

§1—**Refunds (Section 48)**—Refunds are necessitated owing to the system of " taxation at source " as in the case of dividends, and " deduction at source " as in the case of interest from securities, salaries and certain other payments. In both these groups of cases the average rate of tax, if any, appropriate to the " total income " or the " total world income " as the case may be, of the recipient of the income is not known at the time the tax is assessed or deducted. It is quite likely in such cases that the individual rate of tax would be lower than the maximum rate at which the deductions are made. For the purposes of refund dividends are deemed to have been taxed at the maximum rate of income-tax in force in the financial year in which they are paid, credited or distributed.

If any Individual, Hindu Undivided Family, Company, Local Authority, Firm or other Association of persons, or any partner of a firm or member of an Association can prove to the satisfaction of the Income-tax Officer that the amount of tax paid by him or on his behalf or treated as paid on his behalf in any year exceeds the amount with which he is properly chargeable under the Act for that year then he can apply for a refund of tax overpaid. The application must be made in the prescribed form accompanied by a return of the " total income " or of the " total world income " as the case may be unless such a return has already been submitted.

An Executor, Administrator or other legal representative of a person who is dead, lunatic or otherwise incapacitated can lodge claims for a refund of tax for the benefit of such person. In cases where the applicant is a resident outside India whose income is wholly taxed at source or whose only income for direct assessment is derived from dividends or both, the application should be made to the Income-tax Officer, Non-Residents Refund Circle, Bombay. In case of other claimants, the application should be submitted to the Income-tax Officer within whose jurisdiction they ordinarily reside.

Section 18(9) makes it obligatory upon the person deducting income-tax or super-tax to issue a certificate specifying the amount of tax deducted from the income concerned and the rate at which it has been deducted. Similarly Section 20 requires the principal Officer of a Company distributing dividends, to issue to the shareholders a certificate stating that the Company has paid or will pay the income-tax on the profits that are being distributed. These certificates are accepted by Income-tax Authorities as a proof that the tax has been paid.

The onus of proving the claim to a refund and therefore of adducing satisfactory evidence of his total income and of total world income lies on the claimant, and if he fail to discharge it, his claim will be rejected. Certificates of the Revenue Authorities of the United Kingdom or a Dominion will normally be accepted as proof of the amount of income arising or assessable in that country.

Claims should be submitted within four years from the last day of the assessment year. To illustrate, if the income arose in the year ended 31-3-46, (assessable in the year 1946-47) the claim must be submitted within 31-3-51. Refund admissible to an assessee may be set off against outstanding demands, if any. Where an assessee is not satisfied with the decision of the Income-tax

Officer, in disposing of the claim for refund, he can appeal to the Appellate Assistant Commissioner.

Illustration 41—Calculate the amount of refund admissible to Sm. Suruchi Bala Singha, a widow of 51 Deshapran Avenue, Calcutta, as per Return of her income for the year ended 31st March 1949. Status in the Accounting year—Individual, Resident and Ordinarily Resident.

Return of total income for the year ended 31st March, 1949.

Sources.		Amount of income.	Income-tax paid.
Interest on Securities		Rs. 10,000	Rs. 3,125
Rupee Dividends		16,000	5,000
Sterling Dividends credited to London A/c £600 @ 1s. 6d.	Rs. 8,000		
Less: Statutory Allowance	4,500	3,500	—
		Rs. 29,500	Rs. 8,125

ANSWER

Income-tax payable on Rs. 29,500 at the rates ruling in the fiscal year 1948-49.

Rs. 1,500	Nil	Nil	
3,500 @ 12 pies per Rupee		Rs. 218 12	
5,000 @ 24 ,, ,, ,,		625 0	
5,000 @ 42 ,, ,, ,,		1,093 12	
14,500 @ 60 ,, ,, ,,		4,531 4	Rs. 6,468 12

Average rate of Income-tax $= \frac{\text{Rs. } 6,468\ 12}{\text{Rs. } 29,500} = 42.101$ pies per Rupee.

Income-tax payable on Rs. 29,500 at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee		Rs. 164 1	
5,000 @ 21 ,, ,, ,,		546 14	
5,000 @ 42 ,, ,, ,,		1,093 12	
14,500 @ 60 ,, ,, ,,		4,531 4	Rs. 6,335 15

Average rate of Income-tax $= \frac{\text{Rs. } 6,335\ 15}{\text{Rs. } 29,500} = 41.237$ pies per Rupee.

Super-tax payable on Rs. 29,500 at " wholly unearned income " rates ruling in the fiscal year 1949-50.

Rs. 25,000	Nil	Nil	
4,500 @ -/3/- per Rupee		Rs. 843 12	Rs. 843 12

Income-tax payable

On Interest on Securities	Rs. 10,000		
Rupee Dividends	16,000		
	Rs. 26,000	@ 42.101 pies per Rupee	Rs. 5,701 3
		Carried over	Rs. 5,701 3

Income-tax payable		Brought Forward	Rs. 5,701 3
On Sterling income	Rs. 3,500	@ 41.237 pies per Re.	751 11
			Rs. 6,452 14
Income-tax paid at source			Rs. 8,125 0
Less: Income-tax payable			6,452 14
		Income-tax Refundable	Rs. 1,672 2

Illustration 42—Calculate the amount of refund admissible to Mr. S. Smith of 5, Melville Street, Edinburgh, on the following return of his income. Status in the Accounting year—Individual, Non-Resident.

Return of total world income for the year ended 31st March, 1950.

Sources.	Amount of income.	Income-tax paid.
Interest on Securities	Rs. 2,000	Rs. 625 0
Rupee Dividends	12,000	3,750 0
Sterling income £1,200 @ 1s. 6d.	16,000	—
	Rs. 30,000	Rs. 4,375 0

ANSWER

Income-tax payable on Rs. 30,000 at the rates ruling in the fiscal year 1949-50.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee		Rs. 164 1	
5,000 @ 21 ,, ,, ,,		546 14	
5,000 @ 42 ,, ,, ,,		1,093 12	
15,000 @ 60 ,, ,, ,,		4,687 8	Rs. 6,492 3

Average rate of Income-tax = $\frac{\text{Rs. } 6,492\ 3}{\text{Rs. } 30,000}$ = 41.55 pies per Rupee.

Super-tax payable on Rs. 30,000 at the rates ruling in the fiscal year 1950-51.

Rs. 25,000	Nil	Nil	
5,000 @ -/3/- per Rupee		Rs. 937 8	Rs. 937 8

Average rate of Super-tax = $\frac{\text{Rs. } 937\ 8}{\text{Rs. } 30,000}$ = 6 pies per Rupee.

Income-tax paid at source			Rs. 4,375 0
Less: Income-tax payable			
on Rs. 14,000 @ 41.55 pies per Rupee		Rs. 3,029 11	
Super-tax payable			
on Rs. 14,000 @ 6 pies per Rupee		437 8	3,467 3
		Income-tax Refundable	Rs. 907 13

Illustration 43—Find out the amount of refund admissible to Sri Paritosh Pyne from the following return of his total income. Status in the accounting year—Individual, Resident and Ordinarily Resident.

Return of total income for the year ended 31st March, 1950.

Sources.	Amount of income.	Income-tax paid.
Salaries	Rs. 12,000	Rs. 667 3
Interest on Securities	1,000	312 8
Rupee Dividends	2,000	625 0
Income from House Properties	1,000	—
	Rs. 16,000	Rs. 1,604 11

Life Insurance Premium paid Rs. 2,500, Capital value being Rs. 30,000 (without profits).

ANSWER

Income-tax payable on Rs. 13,600 (Rs. 16,000 less earned income allowance @ 20% of Rs 12,000 i.e. Rs. 2,400) at the rates ruling at the fiscal year 1949-50.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee		Rs. 164 1	
5,000 @ 21 ,, ,, ,,		546 14	
3,600 @ 42 ,, ,, ,,		787 8	Rs. 1,498 7

Average rate of Income-tax = $\frac{\text{Rs. } 1,498\ 7}{\text{Rs. } 13,600}$ = 21.154 pies per Rupee.

Income-tax payable on Rs. 13,600 at the rates ruling in the fiscal year 1950-51.

Rs. 1,500	Nil	Nil	
3,500 @ 9 pies per Rupee		Rs. 164 1	
5,000 @ 21 ,, ,, ,,		546 14	
3,600 @ 36 ,, ,, ,,		675 0	Rs. 1,385 15

Average rate of Income-tax = $\frac{\text{Rs. } 1,385\ 15}{\text{Rs. } 13,600}$ = 19.566 pies per Rupee.

Income-tax payable			
On Salaries	Rs. 12,000		
Less: Earned Income Allowance	2,400		
	Rs. 9,600		
Interest on Securities	1,000		
Rupee Dividends	2,000		
	Rs. 12,600	@ 21.154 pies p. Re.	Rs. 1,388 4
		Carried over	Rs. 1,388 4

Income-tax payable	Brought Forward	Rs. 1,388 4
On Income from		
House Properties	Rs. 1,000 @ 19.566 pies p. Re.	101 14
		Rs. 1,490 2
Less: Rebate on Life Insurance Premium of Rs. 2,500 @ 21.037 *pies per Rupee		273 15
	Net tax payable	Rs. 1,216 3
Income-tax paid at source		Rs. 1,604 11
Less: Net tax payable		1,216 3
	Income-tax Refundable	Rs. 388 8

*The average rate $= \frac{\text{Rs. } 1,490\ 2}{\text{Rs. } 13,600} = 21.037$ pies per Rupee.

§2—Double Income-tax Relief (Section 49)—The position of those persons who are called upon to pay tax in two or more different countries on the same source of income is one that gives rise to much complications. Consequently provisions have been made in the Indian Income-tax Act for granting appropriate relief in respect of the income which have been subjected to tax in more than one country. Though this branch of the Income-tax Regulations involves numerous complexities in practice, the root principles on which the relief is given will be discussed hereinafter.

Sections 10, 11 and 12 of the Income-tax and Business Profits Tax (Amendment) Act, 1948 have drastically changed the existing arrangements of Double Taxation Relief. Moreover, a large number of the Indian States have acceded to the Union of India. It, therefore, follows that the main principles on which the relief was so long being given, will have to be changed in the light of the changing circumstances. Already an agreement has been concluded between India and Pakistan by which the question of Double Taxation has been avoided. (*See* § 3).

(a) India and United Kingdom—If an assessee who has paid tax in India proves to the satisfaction of the Income-tax Officer that he has also paid United Kingdom tax for the corresponding year in respect of the same income, he shall be entitled to a proportionate refund of tax paid in both the countries. Briefly the United Kingdom Law gives relief at a rate up to either the Indian rate of tax (if the Indian rate of tax is lower than half of the United Kingdom rate of tax) or half the United Kingdom rate of tax in other cases, whilst the Indian Law gives further relief so that in effect the assessee pays in the aggregate tax at either the United Kingdom rate of tax or the Indian rate, whichever is higher.

The United Kingdom rate of tax means the rate at which the assessee has borne United Kingdom Income-tax and Super-tax for that year. Indian rate of tax means (1) the amount of Indian Income-tax paid by the assessee after adjustment of rebates regarding Life Assurance premia, Provident Fund contributions etc., divided by his total income as reduced by any income exempted from Indian Income-tax under the Provisions of the Act i.e. income from tax-free securities, Life Assurance premia, Provident Fund contributions

etc., plus (2) the amount of Indian Super-tax divided by his total income (*See Illustration No. 44*).

When the income has been taxed in both the countries the assessee should at the first instance claim the relief in the United Kingdom. If the Indian rate of tax is less than half of the United Kingdom rate, no further relief is admissible in India. Where, however, the Indian rate is more than half of the United Kingdom rate the assessee is entitled to a further relief in India which would of course, be the amount by which the Indian rate exceeds half of the United Kingdom rate. To illustrate, if the Indian rate is 12 pies per Rupee and the United Kingdom rate is 30 pies per Rupee, the assessee is entitled to a relief of 12 pies per Rupee in the United Kingdom; no further relief is admissible in India. If, on the other hand, the Indian rate is 18 pies per Rupee (the United Kingdom rate remaining same) the assessee is entitled to a relief of 15 pies per Rupee in the United Kingdom and 3 pies per Rupee in India.

To obtain relief in India, the assessee should submit the official receipt for the United Kingdom tax paid, the notice of assessment showing the basis on which the liability has been computed and a certificate of the Revenue Authorities showing what relief has actually been granted to him in the United Kingdom. The Indian assessment in respect of which the relief is claimed will then be compared with the United Kingdom assessment based on the same period of accounts and the relief will then be allowed by reference to the United Kingdom rate of tax charged on that United Kingdom assessment.

In order to determine the " same part of income " which has suffered tax in both the countries, and on which relief is to be given in India, the sources of " Incoming profits " included in both the assessments will alone be compared. Income from any source included in the assessment by one country but not by the other will be excluded from the comparison. But no comparison will, however, be necessary between allowances or deductions permissible in one country and those in the other. The amount of income in respect of which relief is admissible will then be the amount of Indian assessment as reduced by such deductions or the amount of comparable United Kingdom assessment, whichever is less.

Where the accounts on which the Indian assessment is based, enter into United Kingdom assessments for two different years; the Indian assessment will for the purposes of relief, be divided into two portions, relief on each being allowed by reference to the taxation of that particular portion in the United Kingdom. If a carry forward of loss is allowed in one country but not in the other, the income considered in the assessment of the country in which the loss is allowed, will be reduced by the loss allowed as a set off. The finally reduced income will then be compared with the income of the other country and relief will be allowed on the lower of the two amounts thus compared. If the difference between the incomes charged in the two countries is due to the fact that remittances only are taxed in India and the whole income in the United Kingdom, the remittances alone should be regarded as having suffered double taxation.

Where a defined part of the income is exempted from tax or falls altogether outside the scope of the tax in either country e.g. interest on tax-free securities in either country or Agricultural Income in India, relief will not be allowed in respect of the tax on such part of the income. If, however, the exempted or untaxed part of the income is not separable but

forms an element in the doubly taxed income, relief will be allowed on the proportionate amount of income which is derived from sources subjected to tax.

The application should be submitted in the prescribed form within four years from the end of the assessment year. Where, however, there is a delay in settling assessments and claims to the relief in the United Kingdom, provisional claims for double income-tax relief unsupported by any proof that relief has actually been obtained in the United Kingdom will be accepted by the Authorities in India if presented within the limitation period.

Illustration 44—Mr. Price of Illustration No. 34 paid the amount of tax due from him and sent the tax receipts to his London agents for claiming Double Income-tax Relief admissible to him in the United Kingdom, in respect of his sterling income which was also taxed in that country. After the claim was settled in the United Kingdom his London agents forwarded him the following certificate to enable him to lodge a reciprocal claim in India. Calculate the amount refundable to him.

Finance Act 1920, Section 27
Relief in respect of Dominion Income-tax.

This is to certify that Mr. P. E. Price of 21, Broad Street, Calcutta, has been allowed relief from the United Kingdom Income-tax for the year ending 5th April 1949 in respect of Indian Income-tax and Super-tax as follows :—

(a) Appropriate rate of United Kingdom tax for the year ending 5th April 1949—12s. in the £

(b) Amount of income as assessed to United Kingdom Income-tax in respect of the year ended 5th April 1949 on which relief from United Kingdom tax has been allowed in respect of Indian Income-tax and Super-tax—£2,100, being

(c) Taxed Dividends arising in India during the year ended 31st March 1948.

(d) Rate of Relief allowed £0-6-0 in the £.

(e) Amount of relief allowed £630.

Seal
on behalf of the
Commissioners of Inland Revenue.

Sd/-
Inspector of Taxes,
15th January, 1949.

ANSWER

(1) Doubly taxed income on which relief has been allowed in the United Kingdom £2100 @ 1s. 6d. Rs. 28,000

(2) Effective Rate of Indian Income-tax

$$= \frac{\text{Income-tax paid}}{\text{Income charged to Income-tax}}$$

$$= \frac{\text{Rs. 28,500 less Rs. 1,425}}{\text{Rs. 1,00,000 less Rs. 5,000}} = 54.72 \text{ pies per Rupee.}$$

(3) Effective Rate of Indian Super-tax

$$= \frac{\text{Super-tax paid}}{\text{Income charged to Super-tax}}$$

$$= \frac{\text{Rs. 26,718-12}}{\text{Rs. 1,00,000}} = 51.3 \text{ pies per Rupee.}$$

(4) Indian rate of tax = 106.02 pies per Rupee.
(5) United Kingdom rate of relief allowed £0-6-0 per £ = 57.6 ,, ,, ,,

(6) Indian rate of relief = 48.42 pies per Rupee.

(7) Total amount of relief admissible in India
= (Doubly taxed income) × (Indian rate of relief).
= 28,000 × 48.42 pies = Rs. 7,061 4

Illustration 45—Mrs. R. Robson of Illustration No. 35 paid the amount of tax due from her in India and lodged a claim for Double Income-tax Relief in the United Kingdom. She forwarded the following certificate to her agent in India for claiming the reciprocal relief admissible to her. Calculate the amount of relief.

Finance Act 1920, Section 27
Relief in respect of Dominion Income-tax.

This is to certify that Mrs. R. Robson of 12, Victoria Road, London, W. 8, has been allowed relief from the United Kingdom Income-tax for the year ending 5th April 1949 in respect of Indian Income-tax and Super-tax as follows:—

(a) Appropriate rate of United Kingdom tax for the year ending 5th April 1949 = 16s. in the £.
(b) Amount of income as assessed to United Kingdom Income-tax for the year ending 5th April 1949 on which relief from United Kingdom tax has been allowed in respect of Indian Income-tax and Super-tax £2625, being
(c) Royalty, interest and dividends arising in India during the year ended 31st March 1948
(d) Rate of relief allowed £0-8s. in the £.
(e) Amount of relief allowed £1050.

Seal
on behalf of
Commissioner of Inland Revenue.

Sd/-
Inspector of Taxes,
22nd February, 1949.

ANSWER

(1) Doubly taxed income on which relief has been allowed in the United Kingdom £2625 @ 1s. 6d. = Rs. 35,000
(2) Effective rate of Indian Income-tax

$$= \frac{\text{Income-tax paid}}{\text{Income charged to Income-tax}}$$

$$= \frac{\text{Rs. 10,316 8}}{\text{Rs. 35,000}} = 56.5935 \text{ pies per Rupee.}$$

(3) Effective rate of Indian Super-tax

$$= \frac{\text{Super-tax paid}}{\text{Income charged to Super-tax}}$$

$$= \frac{\text{Rs. 13,054 5}}{\text{Rs. 35,000}} = 71.6123 \text{ pies per Rupee.}$$

(4) Indian rate of tax = 128.2058 pies per Rupee.
(5) United Kingdom rate of relief allowed £0-8-0 per £. = 76.8 ,, ,, ,,

(6) Indian rate of relief = 51.4058 pies per Rupee.

(7) Total amount of relief admissible in India
= (Doubly taxed income) × (Indian rate of relief,
= 35,000 × 51.4058 pies = Rs. 9,370 13

Illustration 46—Exchange Bank of Asia Ltd. of Illustration No. 36 paid the amount of tax due from it in India and lodged a claim for Double Income-tax Relief in the United Kingdom. After the relief was settled in the United Kingdom, the Bank submitted the following certificate along with an application for Double Income-tax Relief admissible to it in India. Calculate the amount of relief.

Finance Act 1920, Section 27
Relief in respect of Dominion Income-tax.

This is to certify that the Exchange Bank of Asia Ltd. of 19, Bishopsgate, London, E.C. 2, has been allowed relief from the United Kingdom Income-tax for the year ended 5th April 1949 in respect of Indian Income-tax and Super-tax as follows:—

(a) Appropriate rate of United Kingdom tax for the year ended 5th April 1949 = £0-9s. in the £.
(b) Amount of income as assessed to United Kingdom Income-tax for the year ended 5th April 1949 on which relief from United Kingdom tax has been allowed in respect of Indian Income-tax and Super-tax £450,000 being the amount of doubly taxed profits.
(c) Description of the said income—Banking.
(d) Rate of relief allowed £0-4-6d. in the £.
(e) Amount of relief allowed £101,250.

Seal
on behalf of
Commissioners of Inland Revenue.

Sd/-
Inspector of Taxes,
4th July, 1949.

ANSWER

(1) Doubly taxed income on which relief has been allowed in the United Kingdom = £450,000 @ 1s. 6d. = Rs. 60,00,000

(2) Indian rate of tax—Income-tax = 60 pies per Rupee.
Super-tax = 30 ,, ,, ,,
96 pies per Rupee.

(3) U.K. rate of relief allowed £0-4-6d. in the £ 43.2 ,, ,, ,,

(4) Indian rate of relief	=52.8 pies per Rupee.
* But the rate is restricted to	43.2 pies per Rupee.
(5) Total amount of relief admissible in India =60,00,000×43.2 pies	=Rs. 13,50,000

* The rate of relief in India is restricted to half of U.K. rate which is lower than the Indian rate of tax.

(b) **India and Ceylon**—If an assessee who has paid tax in India proves to the satisfaction of the Income-tax Officer that he has also paid Ceylon tax for the corresponding year in respect of the same income, he shall be entitled to a repayment of half the Ceylon tax after deducting therefrom any relief due under Section 45(2) of the Ceylon Income-tax Ordinance, 1932, calculated on that part of his total income on which relief if admissible under the Ceylon Income-tax Law, or half the Indian tax suffered on account of the doubly taxed income whichever is lower. It should be noted in this connection that "Ceylon tax" does not include for the purposes of relief either in India or Ceylon (i) the additional tax charged on non-resident companies under Section 20(7) of the Ceylon Income-tax Ordinance, 1932 and (ii) tax on any sum payable by way of interest, annuity, ground rent, or royalty out of the income in respect of which the tax is charged.

The Ceylon rate of tax shall be ascertained by dividing the Ceylon tax by the income on which the tax has been paid. "Indian tax" includes Company Super-tax as regards Companies themselves but not as regards Shareholders.

Relief cannot be granted 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 India; in the year after a business ceases its profits should be liable to tax in India but not in Ceylon. Consequently relief will not be given in either of these cases.

Illustration 47—Sri Uma Kanta Parasar, Ceylon Government pensioner, settled in India. During the year ended 31st March 1950 he brought into India Rs. 8,000 from his pension received in Ceylon. From the following Income-tax assessments, India and Ceylon—Calculate the amount of Ceylon Income-tax relief admissible to Sri Uma Kanta Parasar in India.

Indian Income-tax Assessment.
Income-tax year ending 31st March, 1951.
Income of the year ending 31st March, 1950.

Income from House Properties	Rs. 15,000	0
Ceylon Income brought into India	8,000	0
Total income	Rs. 23,000	0
Income-tax paid on total income on 20-7-50	Rs. 3,648	7

Ceylon Income-tax Assessment
Income-tax year ending 31st March, 1951.
Income of the year ending 31st March, 1950.

Ceylon income	Rs.	9,000 0
Non-Ceylon income		15,000 0
Total world income	Rs.	24,000 0
Income-tax paid on Ceylon income on 9-8-50	Rs.	1,078 14

ANSWER

(1) Doubly taxed income in respect of which relief is admissible in India = Rs. 8,000

(2) Ceylon rate of tax $= \frac{\text{Rs. } 1,078\ 14}{\text{Rs. } 9,000} = 23.016$ pies per Rupee.

(3) Indian rate of tax $= \frac{\text{Rs. } 3,648\ 7}{\text{Rs. } 23,000} = 30.456$ pies per Rupee.

As the Ceylon rate of tax is lower than the Indian rate of tax, the relief admissible in India will be half of the Ceylon rate of tax multiplied by the doubly taxed income i.e.

$$\frac{8000 \times 23.016}{2} \text{ pies} = \text{Rs. } 479\ 8.$$

(c) **India, Ceylon and United Kingdom**—It is not unlikely that an assessee may be taxed in India, in Ceylon and in the United Kingdom in respect of his same income. The income may arise in a country (say India a/c Interest on Securities) and pay tax there, it can then be brought into another country (say Ceylon) and be subjected to tax there and lastly the same income may be taxed in a third country (say United Kingdom) owing to the assessee being treated as Resident in that country (say a sterling company registered in the United Kingdom). In such cases the Ceylon relief admissible in India will be the difference between half of the Indian rate and the relief already allowed in India (a/c United Kingdom).

To illustrate, if a company, pays tax in the United Kingdom, say at 96 pies per Rupee, in India, say at 56 pies per Rupee and in Ceylon, say at 30 pies per Rupee, then the Company will be entitled to a relief of 48 pies per Rupee in the United Kingdom, 23 pies per Rupee in India, (8 pies a/c United Kingdom and 15 pies a/c Ceylon), and 15 pies per Rupee in Ceylon. Though the Company pays 182 pies per Rupee at the first instance it ultimately pays in all the countries 96 pies per Rupee. (182 pies less total relief 86 pies).

Illustration 48—The Exchange Bank of Asia Ltd. of Illustration Nos. 36 and 46 submitted an application for Ceylon Income-tax relief supported by the following certificate of tax paid in Ceylon. Calculate the amount of relief admissible.

Ceylon Income-tax.

I hereby certify that the Exchange Bank of Asia Ltd. of P.O. Box No. 314, Colombo, Ceylon, has paid Ceylon Income-tax for the year of

assessment ending 31st March 1949 amounting to Rs. 3,10,000 on a total income of Rs. 10,00,000 at the rate of 25% plus 6% on account of non-resident Companies. The said total income includes Rs. 4,00,000 being interest on the Government of India Securities.

Seal
Office of the Commissioner
of Income Tax, Ceylon.

Sd/-
Income-tax Officer, Colombo
10th August, 1949.

ANSWER

(1) Triply taxed income in respect of which relief is admissible in India = Rs. 4,00,000.

(2) Ceylon rate of tax = $\frac{\text{Rs. } 3,10,000}{\text{Rs. } 10,00,000}$ = Rs. 31 per cent. (of which Rs. 25 per cent. is eligible for Relief. See page 164).

(3) Tax paid in Ceylon in respect of the triply taxed income of Rs. 4,00,000 @ Rs. 25 per cent. = Rs. 1,00,000; 50% thereof being Rs. 50,000.

(4) Indian rate of tax as per Illustration 46 = 96 pies per Re.

(5) Tax paid in India in respect of the triply taxed income of Rs. 4,00,000 @ 96 pies per Re. = Rs. 2,00,000; 50% thereof being Rs. 1,00,000.

(6) Relief already allowed as per Illustration 46 @ 43.2 pies on Rs. 4,00,000; = Rs. 90,000.

(7) Relief admissible in India in respect of the triply taxed income = Rs. 1,00,000 less Rs. 90,000 = Rs. 10,000

(d) **India and Aden**—Any assessee who pays income-tax in India as also in Aden in respect of the same income, is entitled to claim Double Income-tax Relief in both the countries. The relief admissible in India will be calculated on the doubly taxed income at a rate bearing to the Indian rate of tax or the Aden rate of tax, whichever is the lower, the same proportion as the Indian rate of tax bears to the sum of the Indian rate and the Aden rate of tax. To illustrate, if the doubly taxed income be, say Rs. 32,000 the Indian rate of tax, say 60 pies per Rupee, and the Aden rate of tax, say 36 pies per Rupee, then the relief admissible in India will be calculated as follows:—

$$\text{Doubly taxed income} \times \left(\frac{\text{Indian rate of tax}}{\text{Indian rate of tax} + \text{Aden rate of tax}}\right) \times$$

(Indian rate of tax or Aden rate of tax, whichever is lower.)

$$= 32,000 \times \frac{60}{60+36} \times 36 \text{ pies} = \text{Rs. } 3,750.$$

(e) **India and Dominions**—Arrangements have been made with Kenya, Tanganyika, Uganda, Zanzibar, Gold Coast, Nigeria, Sierra Leone, Gambia and Mauritius for granting reciprocal relief in those countries and India in respect of any income which is taxed in India and those countries. The relief admissible in India in respect of the doubly taxed income will be determined as follows:—

(i) If the assessee is resident in India, the rate of relief shall be the Dominion rate of tax when it does not exceed half of the Indian rate and in other cases half the Indian rate.

(ii) If the assessee is non-resident in India, the rate of relief shall be half of the Dominion rate of tax if it does not exceed the Indian rate and in other cases the amount by which the Indian rate of tax exceeds half of the Dominion rate.

§3—India and Pakistan—Double Taxation avoidance—(Section 49AA).

Whereas the Government of the Dominion of India and the Government of the Dominion of Pakistan desire to conclude an agreement for the avoidance of double taxation of income chargeable in the two Dominions in accordance with their respective laws.

Now, therefore, the said two Governments do hereby agree as follows:—

Article I.—The taxes which are the subject of the present Agreement are the taxes imposed in the Dominions of India and Pakistan by the Indian Income-tax Act 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940), and the Business Profits Tax Act, 1947 (XXI of 1947), as adapted in the respective Dominions.

Article II.—Subject to the provision of Article IX this Agreement shall continue in force so long as the basis of residence and the scope of the charging provisions in the aforesaid Acts as adapted remain unaltered in both the Dominions, and shall apply to the following assessments made under the said Acts in the Dominions—

(i) Assessments made on or after the 15th day of August 1947 for the assessment year 1947-48 (or for the corresponding chargeable accounting period).

(ii) All other assessments made on or after the 1st day of April 1948, excepting excess profits tax assessments for chargeable accounting periods for which provisional assessments have been made before 1st April 1948.

Article III.—Save under the provisions of Section 34 of the Income-tax Act, 1922, and Section 15 of the Excess Profits Tax Act, 1940, as adapted neither Dominion shall charge to tax any income of a person whose assessment (whether regular or provisional) including such income had been completed before the 15th day of August, 1947, or 1st day of April, 1948, as the case may be by an Income-tax Officer or Excess Profits Tax Officer functioning respectively under the Indian Income-tax Act, 1922, or the Excess Profits Tax Act, 1940, or under those Acts as adapted and applied to any Areas or to either Dominion.

Article IV.—Each Dominion shall make assessment in the ordinary way under its own laws; and, where either Dominion under the operation of its laws charges any income from the sources or categories of transactions specified in column I of the Schedule to this Agreement (hereafter referred to as the Schedule) in excess of the amount calculated according to the percentage specified in columns 2 and 3 thereof, that Dominion shall allow an abatement equal to the lower amount of tax payable on such excess in their Dominion as provided for in Article VI.

Article V.—Where any income accuring or arising without the territories of the Dominions is chargeable to tax in both the Dominions, each Dominion shall allow an abatement equal to one-half of the lower amount of tax payable in either Dominion on such doubly taxed income.

Article VI.—(a) For the purposes of the abatement to be allowed under Articles IV or V, the tax payable in each Dominion on the excess or the doubly taxed income, as the case may be, shall be such proportion of the tax payable in each Dominion as the excess or the doubly taxed income bears to the total income of the assessee in each Dominion.

(b) Where at the time of assessment in one Dominion, the tax payable on the total income in the other Dominion is not known, the first Dominion shall make a demand without allowing the abatement, but shall hold in abeyance for a period of one year (or such longer period as may be allowed by the Income-tax Officer in his discretion) the collection of a portion of the demand equal to the estimated abatement. If the assessee produces a certificate of assessment in the other Dominion within the period of one year or any longer period allowed by the Income Tax Officer, the uncollected portion of the demand will be adjusted against the abatement allowable under this Agreement; if no such certificate is produced, the abatement shall cease to be operative and the outstanding demand shall be collected forthwith.

Article VII. (a) Nothing in this Agreement shall be construed as modifying or interpreting in any manner the provisions of relevant Taxation laws in force in either Dominion.

(b) If any question arises as to whether any income fall within any one of the items specified in the Schedule and if so under which item the question shall be decided without any reference to the treatment of such income in the assessment made by the other Dominion.

Article VIII.—The Schedule to this Agreement may be modified from time to time by agreement between the Central Boards of Revenue of the two Dominions and references to the Schedule in the foregoing Articles shall be read as references to the Schedule, as modified.

Article IX.—Either of the Contracting Parties may, six months before the beginning of any financial year (beginning on the 1st day of April) give to the other Contracting Party, through diplomatic channels, notice of termination, and in such events this Agreement shall cease to have effect in relation to any assessment to income-tax for the financial year beginning with the first day of April next following and in relation to assessments to any other tax on the income of the corresponding chargeable accounting period.

THE SCHEDULE

(See Article IV)

Source of income or nature of transaction from which income is derived.	Percentage of income which each Dominion is entitled to charge under the Agreement.	
1	2	3
1. (a) Salaries paid by employers other than Government.	100 per cent. by the Dominion in which the salary is earned by service.	Nil by the other.
(b) Salaries paid by Government.	100 per cent. by the Dominion which pays the salary.	Nil by the other.

Source of income or nature of transaction from which income is derived.	Percentage of income which each Dominion is entitled to charge under the Agreement.	
1	2	3
2. (a) Interest on Government Securities.	100 per cent. by the Dominion where the securities are enfaced for payment of interest and principal.	Nil by the other.
(b) Interest on securities other than Government Securities.	100 per cent. by the Dominion in which the investment is used.	Nil by the other.
3. Income from property.	100 per cent. by the Dominion in which the property is situated.	Nil by the other.
4. Income from profession or vocation.	100 per cent. by the Dominion in which professional service is rendered.	Nil by the other.
5 Income from "Business" or "Other sources" ..... (a) Rent or royalty from lease renting or hire of property		
(b) Rent or royalty or licence fees or any like consideration from rights conceded in respect of property.	100 per cent. by the Dominion in which the property is situated.	Nil by the other.
(c) Rent or royalty or any like consideration from any interest in property.		
(d) Profits or gains from dealings in property growing out of the ownership or use of or interest in such property.	100 per cent. by the Dominion in which the property is situated.	Nil by the other.
(e) Rent or royalty for the use of or for the privilege of using patents, copyrights goodwill trade marks and other like property.	100 per cent. by the Dominion in which the asset is used.	Nil by the other.
(f) Income derived from any money lent at interest and brought into a Dominion in cash or in kind.	100 per cent. by the Dominion in which the money is brought.	Nil by the other.
(g) Transport Ships Air Road.	100 per cent. by the Dominion in which the traffic originates.	Nil by the other.

Source of income or nature of transaction from which income is derived.	Percentage of income which each Dominion is entitled to charge under the Agreement.	
1	2	3
6. Capital gains:—		
(a) From sale, exchange or transfer of an immovable capital asset and any rights pertaining thereto.	100 per cent. by the Dominion in which the capital asset is situated.	Nil by the other.
(b) from the sale, exchange or transfer of other assets.	100 per cent. by the Dominion in which sale, exchange or transfer takes place.	Nil by the other.
7. (a) Goods purchased in one Dominion and sold in the other in the same condition without any manufacturing process so as to change the identity of the goods.	10 per cent. of the profits by the Dominion in which goods are purchased provided there is a branch or regular purchasing agency in the Dominion.	90 per cent. by the other.*
(b) Goods merchandise or commodities manufactured in one Dominion and delivered by the manufacturer to a buyer in the same Dominion.	100 per cent. by the Dominion in which the goods are manufactured.	Nil by the other.
(c) Goods merchandise or commodities manufactured in one Dominion and sold by the manufacturer in the other without any further process and without having a selling establishment or regular agency in the latter Dominion.	75 per cent. by the Dominion in which goods are manufactured.	25 per cent. by the Dominion in which goods are sold.
(d) Goods merchandise or commodities manufactured in one Dominion and sold by the manufacturer in the other through a selling establishment or a regular agency.	50 per cent. by the Dominion in which goods are manufactured.	50 per cent. by the Dominion in which goods are sold
(e) Goods merchandise or commodities manufactured by the assessees partly in one Dominion and partly in the other.	50 per cent. of the profits by each Dominion.	50 per cent. of the profits by each Dominion.

* If there is no regular purchasing agency, 100 per cent. shall be chargeable by the Dominion in which goods are sold and Nil by the other.

Source of income or nature of transaction from which income is derived.	Percentage of income which each Dominion is entitled to charge under the Agreement.	
1	2	3
(f) Metal ores, minerals, mineral oils and forest produce extracted in one Dominion and delivered by the extractor to a buyer in the same Dominion.	100 per cent. by the Dominion in which the minerals are extracted.	Nil by the other.
(g) Metal ores, minerals, mineral oils and forest product extracted in one Dominion and sold in the other without any further manufacturing process and without selling establishment or a regular agency.	75 per cent. of the profits by the Dominion in which minerals are extracted.	25 per cent. by the Dominion in which goods are sold.
(h) As above but sold in the other Dominion through a branch or selling establishment or regular agency.	50 per cent. of the profits by the Dominion in which minerals are extracted.	50 per cent. of the profits by the Dominion in which goods are sold.
8. Dividends.	By each Dominion in proportion to the profits of the Company chargeable by each Dominion under this Agreement.	(As in preceding column.)†
9. Any income derived from a source or category of transactions not mentioned in any of the foregoing items of this Schedule.	100 per cent. by the Dominion in which the income actually accrues or arises	Nil by the other.

§4—Relief granted to a company to be deemed relief granted to Shareholder. [Sections 16(2) 49B & 49C]—Section 16(2) read with 49B provides that a dividend shall be increased proportionately by the amount of income-tax (not super-tax) payable by the Company at the rate applicable to its total income for the financial year in which the dividend is paid, credited or distributed and that the recipient shall be deemed to have himself paid the tax. (*See Chapter IX* §2). Section 49C similarly provides that when a Company which has obtained any double (or triple) income-tax relief, distributes a dividend, the shareholder shall be deemed to have himself proportionately obtained such relief. If the rate of relief granted to the Company in respect of income-tax only for the financial year preceding the year in which the dividend is paid, exceed the rate of relief to which he would directly be entitled in the year of assessment of such dividend, then the excess relief shall be recovered from

† Relief in respect of any excess Income-tax deemed to be paid by the shareholder shall be allowed by each Dominion in proportion to the profit of the company chargeable by each under this agreement.

him. The combined effect of these Sections is explained in detail in the Illustrations No. 49 and 50.

Illustration 49—Utkal Trading Co., Ltd. paid income-tax at 60 pies per rupee and Super-tax at 24 pies per rupee for the assessment year 1948-49 on its entire income of Rs. 5,00,000. The Company was granted double income-tax relief at 41.13 pies per rupee for the assessment year 1947-48 (the original rate of tax was—income-tax 60 pies per rupee and super-tax 24 pies per rupee). Sri Bimal Baran Bhattacharjee, a shareholder of the Company received during 1948-49 dividends amounting to Rs. 1,100 free of tax. As he had no other income during the year ended 31st March 1949 he applied for a refund of income-tax paid at source by the Company in respect of the dividend. Calculate the amount refundable to him.

ANSWER

(1) The amount of gross dividend as per formula in Chap. IX §2(b) $= \frac{\text{Rs. } 1,100}{I = \frac{60}{192}}$ = Rs. 1,600 0

(2) The proportionate amount of tax paid by the Company at 60 pies per Rupee on Rs. 1,600 = Rs. 500 0

(3) The rate of relief deemed to have been received by Sri Bimal Baran Bhattacharjee in respect of Income-tax only $= \frac{41.13 \times 60}{60 + 24} = 29.38$ pies per Re.

(4) Total income of Sri Bimal Baran Bhattacharjee assessable to tax for the fiscal year 1949-50 is Rs. 1,600 and the amount of tax payable = Nil

(5) The amount of relief obtained by Sri Bimal Baran Bhattacharjee at 29.38 pies per Re. on Rs. 1,600 = Rs. 244 13

(6) The amount of tax refundable to him

= Tax paid at source (Item 2)	Rs.	500 0
Less: Double Income-tax Relief deemed to have been obtained by him (Item 5)	Rs.	244 13
	Rs.	255 3
Less: Income-tax payable (Item 4)		Nil
Income-tax Refundable	Rs.	255 3

Illustration 50—Universal Investment Trust Ltd. paid Income-tax at 60 pies per rupee and Super-tax at 24 pies per rupee for the assessment year 1947-48 and obtained double Income-tax relief in India at 42 pies per rupee. It paid Income-tax at 60 pies per rupee and Super-tax at 24 pies per rupee for the assessment year 1948-49 on its entire income of Rs. 5,00,000. Sri Charu Chandra Chatterjee, a shareholder of the Company received during the year ended 31st March 1949 dividends amounting to Rs. 16,500 free of tax.

He had no other source of income and submitted a return of his income in time. He is entitled to double Income-tax relief in India for the assessment year 1949-50 at 18 pies per rupee. Calculate the amount refundable to Sri Charu Chandra Chatterjee.

ANSWER

(1) The amount of gross dividend $= \frac{\text{Rs. } 16{,}500}{1 - \frac{60}{192}}$ = Rs. 24,000

(2) Proportionate amount of Income-tax paid by the Company at 60 pies per rupee on Rs. 24,000 = Rs. 7,500

(3) The rate of relief deemed to have been obtained by Sri Charu Chandra Chatterjee in respect of Income-tax only $= \frac{42 \times 60}{60 + 24}$ pies = 30 pies per Re.

(4) The amount of relief deemed to have been obtained by Sri Charu Chandra Chatterjee in respect of Rs. 24,000 @ 30 pies per Re. = Rs. 3,750

(5) Income-tax at 38 pies per rupee payable by Sri Charu Chandra Chatterjee in respect of his total income of Rs. 24,000 at the rates ruling in the fiscal year 1948-49 = Rs. 4,750

(6) The amount of relief admissible to Sri Charu Chandra Chatterjee in India @ 18 pies per rupee on Rs. 24,000 = Rs. 2,250

(7) Net amount of Income-tax paid at source in respect of the dividend (Item 2 less Item 4) = Rs. 3,750

(8) Net amount of Income-tax payable by Sri Charu Chandra Chatterjee for the assessment year 1949-50 (Item 5 less Item 6) = Rs. 2,500

(9) Net amount refundable to Sri Charu Chandra Chatterjee = Rs. 3,750 less Rs. 2,500 = Rs. 1,250

Note:—Ordinarily the amount refundable to Sri Charu Chandra Chatterjee is Rs. 2,750 (Rs. 7,500 less Rs. 4,750). But as the amount of relief deemed to have been obtained by Sri Charu Chandra Chatterjee was more than the amount of relief directly admissible to him the refund is reduced to Rs. 1,250 [Rs. 2,750 less (Rs. 3,750 less Rs. 2,250)].

It may be mentioned in this connection that though the Company, as per Illustration 49 paid Income-tax at 30.62 pies per rupee (60 less 29.38) and the shareholder was credited with the proportionate amount of tax of Rs. 255-3 only (Rs. 500—less Rs. 244-13) the net dividend received by him was increased by Rs. 500. His total income is not only increased by 244-13 which he does not even constructively receive but he is also liable to pay tax on this sum. The inequity of this provision is more apparent where a dividend is paid "less tax." Neither the Indian Income-tax Act nor the Indian Companies Act does empower a Company, to deduct Income-tax from dividend. The authority to deduct it, is of course, regulated by a Company's

Articles of Association. Where the Articles authorise deduction of Income-tax, (without mentioning at what rate), it is doubtful whether the Company can deduct Income-tax at the maximum rate if it has obtained any Double Income-tax Relief. It was held by the Bombay High Court in Bai Lalita Ratanchand Khimchand-vs-Tata Iron & Steel Co. Ld. that, when no tax was payable by a Company (owing to unabsorbed depreciation) there was no right to deduct it. It can be argued on the basis of this decision that, when a Company pays Income-tax say at 24 pies per rupee after adjustment of Double Income-tax Relief, it cannot deduct Income-tax at say 30 pies per rupee. In the United Kingdom the Companies are empowered to deduct Income-tax at "Effective Rate" i.e. standard rate less any double Income-tax relief obtained by it. In India there is no such provisions. Now, if the Company deduct Income-tax at the maximum rate, the shareholder may sue the Company for a proportionate refund of the double Income-tax relief obtained by it. On the other hand, if the Company deduct Income-tax at the "Effective Rate," thereby increasing the net amount of dividend payable to the shareholder, the Revenue Authorities will gross up this increased net dividend for their purposes. To explain, if a Company pays dividend during the fiscal year 1949-50, say at 12% less Income-tax and a shareholder receives Rs. 975/-, (gross dividend Rs. 1,200/- less Income-tax at the "Effective Rate" of 36 pies per rupee) then the gross dividend to be computed by the Department at 60 pies per rupee, will be Rs. 1,418/-. Though the Company pays a gross dividend of Rs. 1,200/- only, for Income-tax purposes it will be taken at Rs. 1,418/- and the shareholder will be liable to pay additional Income-tax in respect of Rs. 218/- which he does not even constructively receive. The difficulties may be eliminated by grossing the dividend at the 'Effective Rate" instead of the maximum rate.

§5—Relief in respect of non-reciprocating countries—If an assessee, who is resident and ordinarily resident in India pays Income-tax in respect of income which arises outside India, in a country which has not arranged for any double Income-tax relief, he is entitled to deduct from his Indian tax payable in respect of the same income, one half of the Indian tax or one half of the foreign tax whichever is less. The concession is only as regards "income arising outside India" as such it is not admissible if the income arise in India and is taxed in a non-reciprocating country in addition to India.

CHAPTER XV

Miscellaneous.

§1—Deduction of Income-tax in respect of the payments made to Non-Residents (Section 18)—We have discussed in earlier Chapters that income-tax must be deducted from interest and other payments made to a Non-Resident, otherwise these amounts will be disallowed in computing the payer's total income. The Act provides that income-tax at the maximum rate in force on the date of payment should be deducted by the person responsible for payment of any sum chargeable to Indian tax i.e interest, rent, royalty, commission, brokerage etc., to a Non-Resident unless the payer is himself liable to pay tax thereon as agent. The provision covers payments to persons resident outside India. Where, however, the contract for the payment of interest etc., is made abroad and the amounts are payable and paid abroad, deduction of Indian Income-tax cannot be insisted upon by the payer unless there are specific provisions in the contract to that effect.

Though the payers are obliged under the Statute to deduct income-tax the Law does not give any guidance how to determine the status of the payee. The question of residence offers many difficulties which a payer cannot solve and indeed has no information about. A resident within the meaning of Section 4A may be out of India for a considerable time. A Company may be Resident in one year and Non-Resident in the next year. How under these circumstances a payer should know who is resident and who is not? In such circumstances the payer should seek guidance from the Revenue Authorities.

To relieve the Department from the work involved in dealing with numerous trivial claims for refund, the Income-tax Officers have been authorised to issue Exemption Certificates (in suitable cases) directing the payer to make no deduction of tax or to deduct tax at a lower rate than the maximum. Provision has also been made in the Act that deduction of tax shall not apply to transactions such as hedges and struddles carried on between a resident broker and a non-resident broker.

In addition to income-tax, super-tax shall also be deducted at the direction of and at the rates determined by the Income-tax Officer. When no such direction is received from the Income-tax Authorities, the payer should deduct super-tax at the rate appropriate to the excess of the sum payable over the exemption limit for super-tax. Thus, if the payee is an " individual " the appropriate rate should be calculated on the excess over Rs. 25,000 of such payments, and if the payee is a " Company " it should be deducted even if the sum payable is one rupee only.

Super-tax is also deductible from dividends paid to non-residents under certain circumstances. As in the case of interest or other payments, super-tax should be deducted either at the direction of the Income-tax Officer or in the absence of any such direction, by the Company paying the dividend direct. Where the recipient is an individual, super-tax should be deducted if the gross dividend is more than Rs. 25,000. In the case of Company it should be deducted even if the sum payable is one rupee only.

The payer in all cases should furnish the payee with a certificate stating the date and the nature of the payment, the amount paid and the amount of tax deducted. All sums deducted shall be deemed to be income received by the payee and shall be treated as a payment of income-tax or super-tax on his behalf, for which credit shall be given to him in his assessment for the following year.

§2—Rectification of mistakes (Section 35)—Commissioners, Appellate Tribunals, Appellate Assistant Commissioners and Income-tax Officers are authorised to rectify mistakes apparent from the facts or documents which were before them when they passed revisional, appellate or original assessment order as the case may be. They are however debarred from making general review. The rectification may be done on their own motion or on the application of an assessee within four years from the date of the relevant order. The assessee is not allowed to introduce any new facts in this connection. The rectification should be made only in respect of mistake apparent from the records. Where the rectification enhances an assessment or reduces a refund the Income-tax Authorities must allow the assessee a reasonable opportunity of being heard.

§3—Appearance by Authorised Representative (Section 61)—Occasionally the Income-tax Authorities require the assessee to attend in person to produce evidence in the course of assessment proceedings. In such cases the assessee must depute an authorised representative, unless his personal attendance is required under Section 37 for examination on oath or affirmation. In all cases a Power of Attorney on properly stamped paper must be filed. The right of the assessee to appear through an agent has been restricted to a relative, a person regularly employed by him, a Lawyer, an Accountant and an Income-tax practitioner. No other person is allowed to appear before the Authorities in any proceedings.

" Person regularly employed by the assessee " includes any Officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings.

An ' Accountant ' means a registered Accountant enrolled in the register of Accountants maintained under the Auditor's Certificate Rules 1932, a holder of a restricted certificate under the Restricted Certificate Rules 1932, or a member of the following Association of Accountants.

(i) The Institute of Chartered Accountants in England and Wales.
(ii) The Society of Accountants in Edinburgh.
(iii) The Institute of Accountants and Actuaries in Glasgow.
(iv) The Society of Accountants in Aberdeen.
(v) The Institute of Chartered Accountants in Ireland.
(vi) The Society of Incorporated Accountants and Auditors, London.

An ' Income-tax Practitioner ' means (a) person who before 1st April, 1938 attended before an Income-tax Authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee; (b) a person who has passed any of the following examination :—(i) Government Diploma in Accountancy Examination conducted by the Accountancy Board, Bombay; (ii) Diploma in Commerce issued under the Authority of the Provincial Governments in Madras, Bengal, Punjab and Delhi; (iii) The first Examination conducted by the Central Government under the Auditor's Certificates Rules, 1932; (iv) Examinations conducted by the Association of

Certified and Corporate Accountants, London; (c) a person who has acquired a degree in Commerce, Law, Economics or Banking including Auditing, conferred by any of the following Universities:—(i) Any Indian University incorporated by any law for the time being in force; (ii) Rangoon University; (iii) The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales; (iv) The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews; (v) The Universities of Dublin, (Trinity College), and the Queens' University, Belfast.

APPENDIX—A

List of Exempted Incomes

The following classes of income shall be exempt from the tax payable under the Act and they shall not be taken into account in determining the total income or salary of an assessee. (*See Chap. II* §2). They should consequently be treated as " No Income ".

(1) Any income received—

(a) by the Ruler of an Indian State as his privy purse under article 291 of the constitution;

(b) by a Consul General, Consul, Vice-Consul or Consular Agent of a foreign State, as remuneration from such State for service in such capacity;

(c) by a person employed by the Consulate of a foreign State, not being a Citizen of India as remuneration from such foreign State for service in such capacity;

(d) by a Trade Commissioner or other official representative in India of the Government of any other part of the Commonwealth or of a foreign Government, as his official salary, if the official salary of the corresponding officials, if any, of the Central Government resident for similar purposes in the country concerned enjoy a similar exemption in that country;

(e) by a member of the staff of a Trade Commissioner or official representative referred to in sub-clause (d), as his official salary, when such member is a subject of the country represented, and the country represented has made corresponding provisions for similar exemptions in the case of members of the staff of the corresponding officials of the Central Government.

(2) With effect from the 2nd day of September, 1939, the income chargeable under the head " Salaries " of a Nepalese member of the Nepalese Military force serving with His Majesty's Forces, or, after the commencement of the constitution with the Armed Forces of the Union or of any member of an Indian State Force so serving, and any other income accruing or arising without India which is received in or brought into India by any such member while the Force to which he belongs is serving with His Majesty's Forces or, after the Commencement of the constitution with the Armed Forces of the Union.

(3) Sums paid in pursuance of Article 3 of the agreement dated the 17th August 1825 between the British Government and the King of Oudh.

(4) Income derived from the *Bua* tax defined in clause (c) of Section 2 of the Teri Dues Regulation, 1902.

(5) 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 India.

(6) Scholarships granted to meet the cost of education.

(7) 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 to a mess, wine or band fund.

(8) The allowances attached to—The Victoria Cross. The Military Cross. The Order of India. The Indian Order of Merit. The King's Police Medal. The Indian Police Medal.

(9) The interest on Government securities held by, or on behalf of, Ruling Chiefs and Princes of India as their private property.

(10) "Jangi Inams" awarded to Indian Officers, Indian other ranks and followers in respect of services in the Great War.

(11) The yield of Post Office cash certificates.

(12) The interest on deposits in the Post Office Savings Bank.

(13) The Income of a University or other educational institution existing solely for educational purposes and not for purposes of profit.

(14) The income of "Thana Funds" administered by Political Agents in Kathiawar and of the "Secunderabad Local (Akbari, etc.,) Fund" administered by the Resident at Hyderabad.

(15) The income of the Rewa Kantha Mewas Administrations Fund, and of the Sankheda Mewas Road Fund administered by the Political Agent, Rewa Kanta.

(16) The income of—

(a) The following funds controlled by the Resident for 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, Mahi Kantha; the Consolidated Local Fund, Banas Kantha, including the Palanpur Agency Educational, Sihori, Deodar, Varahi, Santalpur Dispensaries, and Survey Funds; and the Sadar Bazar Fund;

(b) The village Police Funds, Kankrej, Deodar, Suigam, Varchi, Santalpur, controlled by the Political Agents, Saber Kantha Agency; and

(c) the Wadhwan Civil Station Fund controlled by the Political Agent, Eastern Kathiawar Agency.

(17) The income of Regimental institutes derived from rebates payable by Institute Contractors.

(18) The interest on securities held by the Kathiawar Education Provident Fund.

(19) The income of recognised regimental thrift and savings Funds, the assets of which consist solely of deposits made by members and the profits earned by the investment thereof.

(20) The income of the Kolhapur Residency Area Fund.

(21) The salaries of the correspondent of the International Labour Officer, New Delhi, and his staff.

(22) The salaries of the Organiser and Manager of the Branch Office of the League of Nations, Bombay, and his staff.

(23) The salaries of Khasadars, Levies and Badraggas employed in the tribal territory of the North West Frontier and of all persons employed in the tribal levy service in Baluchistan.

(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 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 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) *Extra-ordinary* 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.

(30) 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, who have been invalidated from service with such forces on account of bodily disability attributable to, or aggravated by, such service.

(31) 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.

(32) Value of rent-free quarters occupied by or money allowance paid in lieu thereof to, Indian Officer, 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.

(33) Conservancy allowance granted in lieu of free conservancy to non-departmental warrant and non-commissioned officers of the India Unattached List, departmental non-commissioned Officers of the India 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.

(34) The value of the 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.

(35) Deferred pay within the meaning of paragraph 254, Pay and Allowance Regulations for the Army in India, Part II (now Rules 561-565, Pay and Allowance Regulations, Vol. I, read with A. I. (I) 221 of 1942) paid to (Indian) soldiers or non-commissioned officers of the Indian Army.

(36) 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 I.

(37) The income of indigenous 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 Lakhimpur 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.

(38) 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 the Central Government, the Crown Representative or the Provincial Government as the case may be.

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 Beluchistan, Delhi, Ajmer-Merwara, Coorg, The Andaman and Necobar Islands and any first class Resident of the Indian Political Department Service.

(39) Such part of income in respect of which the 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 satisfies 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 duly paid on such assessed income.

(40) The lump grants made by Government to the Indian Church—

(a) for the provision of episcopal supervision and ministrations;

(b) for the payment of allowances to clergymen entertained in lieu of Chaplaincies reduced; and

(c) 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.

(41) 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 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 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.

(42) Income of a Service Fund derived from interest on Government Securities or interest on funds deposited with the Central or any Provincial Government.

For the purpose of this exemption, a Service Fund means a fund established under the authority of, or with the permission of, the Central or any Provincial 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 the Crown are alone admissible as subscribers or members and the funds of which are either deposited with the Central or Provincial Government or invested in Government Securities.

(43) Any war gratuity paid in respect of a person's service in His Majesty's Forces in connection with any hostilities in which His Majesty has been engaged during the period commencing on the 3rd September 1939 and ending on a date to be notified, excluding gratuities (by whatever name called) payable under a contract of service, shall not for the purposes of the Indian Income-tax Act, 1922, be included in the total income or total world income of that person. [War Gratuities (Income-tax exemption) Ordinance 1945.]

APPENDIX—B

Depreciation Allowance

The allowance under section 10(2)(vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be at percentages of the written down value or original cost, as the case may be, equal to one-twelfth the number shown in the corresponding entry in the second column of the following statement.

Provided that if the buildings, machinery, plant or furniture have been used by the assessee in his business for not less than two months during the previous year, the percentage shall be increased proportionately according to the number of complete months of user by the assessee :

Provided further that in the case of a seasonal factory worked by the assessee during all the working seasons of the previous year, the percentage shall be increased as if the buildings, machinery, plant or furniture had been in use throughout the period the assessee was the owner thereof during the previous year.

Class of asset.	Rate. Number on the basis of which the percentage is to be calculated on the written down value, except where otherwise indicated in the case of ocean-going steamers.	Remarks.
1	2	3
I. Buildings—		
(1) First class substantial buildings of selected materials	2.5	Double these numbers will be taken for factory buildings, excluding offices, godowns, officers' and employees' quarters.
(2) Second class buildings of less substantial construction	5	
(3) Third class buildings of construction inferior to that of second class buildings but not including purely temporary erections	7.5	
(4) Purely temporary erections such as wooden structures	...	No rate is prescribed; renewals will be allowed as revenue expenditure.
II. Furniture and Fittings—		
(1) General	6	
(2) Hotels and boarding houses	9	

1	2	3
III. Machinery and Plant— (1) GENERAL RATE	7	An extra allowance up to a maximum of 50 per cent. of the normal allowance will be allowed by the Income-tax Officer where a concern claims such allowance on account of double shift working and satisfies the Income-tax Officer that the concern has actually worked double shift. An extra allowance up to a maximum of 100 per cent. of the normal allowance instead of 50 per cent. will be allowed in the assessments for five years commencing with the assessment for the year 1949-50, where a concern proves that there has been triple shift working. The calculations of the extra allowances for double shift and for triple shift shall be made separately, proportionate to the number of days during which there was only double shift working and during which there was triple shift working. For the purpose of granting this extra allowance the normal number of working days throughout the year will be taken as 300 and if, for example, a concern has worked only double shift for 100 days and triple shift for another 100 days, the extra allowance for double shift will be 1/3 of 50 per cent. of the normal allowance for the whole year and that for triple shift will be 1/3 of 100 per cent. of the normal allowance for the whole year This applies to all concerns whether the general rate or any special rate applies to them, but does not apply to an item of machinery or plant specially excepted by the letters 'N.E.S.A.' being shown against it. *Explanation.*—For this purpose the normal allowance means the amount of depreciation allowance for the year calculated in accordance with Rule 8, but excluding the extra depreciation allowance for multiple shift working or for new plant and machinery.
(2) SPECIAL RATES TO BE APPLIED TO THE WHOLE OF THE MACHINERY AND PLANT USED IN THE FOLLOWING CONCERNS:—		The special rates specified hereinafter may be adopted at the option of the assessee for electrical machinery, air-conditioning machinery, locomotives, rolling stock, tramways and railways, weighing machines, calculating machines, type-writers, Neo post Franking machines, accounting machines, other office machinery, refrigeration plant, containers, etc., and motor vehicles used in these concerns.
A.—(i) Flour Mills except rollers (ii) Rice Mills (iii) Bone Mills (iv) Sugar Works except rollers (v) Distilleries (vi) Ice Factories (vii) Aerating Gas Factories (viii) Match Factories except wooden match frames (ix) Tea Factories (x) Shoe and other leather goods Factories (xi) Starch Factories (xii) Coffee manufacturing concerns	9	
(xiii) Rollers used in Flour Mills and Sugar Works	Nil	The cost of replacement of the rollers will be allowed as revenue expenditure.
(xiv) Wooden Match Frames used in Match Factories	Nil	The cost of replacement of the frames will be allowed as revenue expenditure.

† Letters "N.E.S.A." are a contraction of the expression "no extra shift allowance".

1	2	3
B.—(i) Paper Mills (ii) Strawboard Mills (iii) Ship building and Engineering works (iv) Iron and Brass Foundries (v) Aluminium Factories (vi) Electrical Engineering works (vii) Motor car repairing works (viii) Internal combustion Engines repairing works (ix) Galvanizing works (x) Patent stone works (xi) Oil extraction factories (xii) Chemical works (xiii) Soap and Candle works (xiv) Lime Works (xv) Saw Mills (xvi) Tin and can making works (xvii) Dyeing and bleaching works (xviii) Cement works using rotary kilns (xix) Rod Mills (xx) Hydraulic Presses (xxi) Brick manufacture (xxii) Tile making Industry (xxiii) The manufacture of vegetable ghee (xxiv) The manufacture of optical instruments (xxv) Coke manufacture (xxvi) The manufacture of concrete pipes (xxvii) Telepone operating concerns (xxviii) Wire and nail making mills (xxix) Iron and Steel industry except rolling mill rolls (Blast furnace plant, steel-making plant, steel rolling plant, forges, generators, boiler and sheet mills)	10	
(xxx) Rolling mill rolls used in Iron and Steel Industry.	Nil	The cost of replacement of the rolling mill rolls will be allowed as revenue expenditure.
(xxxi) Tanneries (xxxii) Battery manufacture (xxxiii) The manufacture of Healds and Reeds (knitting, Reed-making, varnishing, doubling, winding and polishing machines) (xxxiv) The manufacture of confectionery including biscuits and peppermints (xxxv) Manufacture of pottery and other clay products	10	
C.—(i) Rubber goods factories— (a) General machinery and plant (b) Moulds (N.E.S.A.)	12 40	
D.—(i) Silk manufacturing—weaving machinery worked by electric motors including winding machines, twisting frames, doubling machines, pirn winding machines, wraping machines, looms, stentering machines and hydro-extractors	12	

1	2	3
(3) SPECIAL RATES TO BE APPLIED TO OTHER MACHINERY AND PLANT—		
A.—Ropeway structures (N.E.S.A.)—		
(i) Trestle and Station steel work	6	
(ii) Driving and tension gearing	10	
(iii) Carriers	12	
(iv) Ropeway ropes and trestle sheaves and connected parts	30	
B.—Salt works—		
(i) Machinery, plant, locomotives, wagons and rolling stock	15	
(ii) Barges and floating plant (N.E.S.A.)	10	
(iii) General plant and machinery used in Engineering shops	10	
(iv) Reservoirs, condensers, salt pans, delivery channels and piers, if constructed of masonry, concrete cement, asphalt or similar materials (N.E.S.A.)	6	
(Note).—Repairs to similar works made of earth will be allowed as revenue expenditure		
(v) Piers, quays and jetties constructed entirely or mainly of steel (N.E.S.A.)	7.5	
(vi) Piers, quays and jetties constructed entirely or mainly of wood (N.E.S.A.)	12	
(vii) Pipe lines for conveying brine if constructed of masonry, concrete cement, asphalt or similar materials (N.E.S.A.)	12	
C.—Electrical machinery—		
(i) Batteries	20	
(ii) Other electrical machinery including electrical generators and motors (other than tramway motors)	10	
(iii) Switchgear and instruments, transformers and other stationary plant, and wiring and fittings of electric light and fan installations (N.E.S.A.)	10	
(iv) Under-ground cables and wires (N.E.S.A.)	7.5	
(v) Over-head cables and wires (N.E.S.A.)	5	
(vi) X-Ray and Electro-therapeutic apparatus and accessories thereto (N.E.S.A.)	20	
D. Machinery used in the production and exhibition of cinematograph films— (N.E.S.A.)		
(i) Recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights, except bulbs	20	
(ii) Projecting equipment of film exhibiting concerns	20	
(iii) Bulbs of Studio Lights	Nil	Renewals of bulbs will be allowed as revenue expenditure.
E.—Electric supply undertakings—		
(i) Electric plant, machinery, boilers	10	
(ii) Hydro-electric concerns—hydraulic works, pipe lines and sluices (N.E.S.A.)	2.5	
F.—Electric tramways—		
(i) Permanent way (N.E.S.A.)		
(a) Not exceeding 50,000 car miles per mile of track per annum	9	

1	2	3
(b) Exceeding 50,000 and not exceeding 75,000 car miles per mile of track per annum	10	
(c) Exceeding 75,000 and not exceeding 1,25,000 car miles per mile of track per annum	12	
(d) Exceeding 1,25,000 car miles per mile of track per annum . .	15	
(ii) Cars—car trucks, car bodies, electrical equipment and motors (N.E.S.A.) .	10	
(iii) General plant, machinery and tools ...	9	
G.—Tramways run by internal combustion engines (N.E.S.A.)		
(i) Permanent way	The same numbers as have been prescribed for the permanent way of electric tramways.	
(ii) Tramcars including engines and gears	10	
H.—Mineral oil concerns (N.E.S.A.)—		
Refineries—		
1. Boilers	10	
2. Prime movers	10	
3. Process plant	12	
Field operations—		
1. Boilers	10	
2. Prime movers	10	
3. Process plant . . .	12	
Except for the following items—		
1. Below ground . ..	100	
2. Above ground—		
(a) Portable boilers, drilling tools, well-head tanks, rigs, etc. .	80	
(b) Storage tanks	10	
(c) Pipe lines—		
(i) Fixed boilers	10	
(ii) Prime movers ..	12	
(iii) Pipe line	10	
(d) Distribution—		
(i) Returnable packages . .	Nil	Cost of packages actually used up will be allowed as revenue expenditure.
(ii) Kerbside pumps including underground tanks and fittings ...	15	
I.—Ships (N.E.S.A.)— ...		
(i) Ocean— ..		The allowance is to be calculated on the original cost. See Appendix C.
(a) Steamers and Motor Vessels ..	5	
(b) Sail or tug	4	
(ii) Inland—		
(a) Steamers and Motor Vessels	10	
(b) Tug boats	12.5	
(c) Iron or Steel flats for cargo ...	10	
(d) Wooden cargo boats upto 50 tons capacity	10	
(e) Wooden cargo boats over 50 tons capacity	10	

1	2	3
(*f*) Motor launches	12.5	
(*g*) *Speed boats	20	
J.—Mines and quarries (N.E.S.A.)—		
(i) Machinery—		
(*a*) Surface and underground machinery (except electrical machinery) head gear, moving parts and rails .	15	
(*b*) Boilers and head gears (excluding moving parts) . .	8	
(ii) Coal tubs, winding ropes, haulage ropes and sand stowing pipes .	Nil	Renewals will be allowed as revenue expenditure.
(iii) Shafts and inclines	7	
(iv) Portable under-ground machinery ...	25	
(v) Safety lamps	Nil	Cost of lamps actually used up will be allowed as revenue expenditure.
(vi) Tramways on the surface	10	
K.—Aeroplanes (N.E.S.A.)—		
(i) Aircraft	80	
(ii) Aero-engines	40	
(iii) Aerial photographic apparatus ...	25	
L.—(i) Textile machinery excluding silk manufacturing machinery—		
(*a*) Cotton	10	
(*b*) Jute excluding generating plant ..	9	
(*c*) Woollen and Worsted	10	
(*d*) Carpet	10	
(ii) Ginning and pressing machinery ...	9	
M.—(i) Air compressors and pneumatic machinery (ii) Electro-plating and Electro-welding plant (iii) Newspaper production plant and machinery (iv) Air-conditioning machinery (v) Locomotives, rolling stock, tramways, and railways used by concerns excluding railway concerns (N.E.S.A.)	10	
N.—(i) Tube well boring plant (ii) Concrete pile driving machines (iii) Weighing machines (N.E.S.A.) (iv) Works Instruments (v) Automatic and semi-automatic machine tools (vi) Precision machine tools, *e.g.*, grinding machines	12	
O.—(i) Calculating machines (N.E.S.A.) (ii) Typewriters (N.E.S.A.) (iii) Neo Post Franking Machines (N.E.S.A.) (iv) Accounting machines (N.E.S.A.) (v) Other office machinery (N.E.S.A.) (vi) Sewing and knitting machines employed in the manufacture of hosiery and woollen goods.	15	

* "Speed Boat" means a motor-driven boat by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 15 miles per hour in still water and so designed that when running at speed it will plane, i.e., its bow will rise from the water.

1	2	3
(vii) Sewing and stitching machines for canvas or leather (viii) Hand or automatic embroidery machines and their accessories (N.E.S.A.) (ix) Refrigeration plant, containers, etc. (N.E.S.A.) (x) Road making plant and machinery (xi) Artificial silk manufacturing machinery except the wooden parts	15	
(xia) Wooden parts of the plant and machinery used for the manufacture of artificial silk.	Nil	The cost of replacement of the wooden parts will be allowed as revenue expenditure.
(xii) Surgical instruments (N.E.S.A.) (xiii) Wireless apparatus and gear, wireless appliances and accessories (N.E.S.A.) (xiv) Building contractors' machinery (N.E.S.A.)	15	
P.—(i) Indigenous sugar cane crushers (Kohlus and Belans) (N.E.S.A.)	18	
Q.—(i) Motor cars (N.E.S.A.) .. .. (ii) Cycles (N.E.S.A.) . ..	20 20	
R.—(i) Moulds used in the manufacture of concrete pipes (N.E.S.A.) ... (ii) Motor taxi, motor lorries, motor buses and motor tractors (N.E.S.A.) .	25 25	
S.—(i) Railway sidings (N.E.S.A.) .	7	
T.—Glass manufacturing Concerns except Direct Fire glass melting Furnaces.		
(i) Recuperative and Regenerative glass melting furnaces . .	20	
(ii) Other plant and machinery including machinery for the manufacture of vacuum tubes and vacuum bulbs	10	
(iii) Direct Fire Glass Melting Furnaces	Nil	Replacement of the furnaces will be allowed as revenue expenditure.

APPENDIX—C

1. *Increased rate of depreciation on ocean-going steamers and motor vessels due to war-time conditions.*—The rate of depreciation allowable on ocean-going steamers and motor vessels will be increased from 5 per cent. to 6.25 per cent. per annum for the period commencing 1st September 1939 and ending six months after the cessation of the present hostilities,—the date whereof will be notified. This increase will affect years of assessment 1940-41 onwards. In order to secure that all shipping concerns receive the increased allowance for the same length of time, the allowance for the year of assessment 1940-41 will have reference to the proportions falling before and after the end of August 1939 of the trading year which is the " previous year " for Income-tax purposes for that year of assessment.

Example 1.

If the " previous year " were the calender year 1939, the depreciation allowance for the year of assessment 1940-41 will be computed at the rate of 5 per cent. for 8 months and at 6.25 per cent. for 4 months.

Example 2.

If the ' previous year " were the year ending 31st March 1940, the allowance will be computed at the rate of 5 per cent. for 5 months and at 6.25 per cent. for 7 months.

If the assessment for 1940-41 has been closed, then where that assessment has been made at nil due to the depreciation allowances not being entirely wiped off, the additional allowance due for that year under this paragraph will be deducted from the profit assessable for the year 1941-42 and in any other case an adjustment will be made in the tax demand for 1941-42 equal to the difference in the tax demand which would have resulted if the additional allowance had been given in the assessment for 1940-41.

2. *The rate of depreciation on second-hand ocean-going steamers and motor vessels.*—In the case of a steamer or motor vessel purchased second-hand the normal allowance will be computed by reference to the actual cost of the steamer or the motor vessel concerned to the new owner and its reasonable expectation of life at the date of purchase. The new rate and the method of computation will have effect from the assessment for 1941-42 and not from any earlier assessment.

The following scale is to be used to determine the fractional part of the cost of a steamer or motor vessel that is to be allowed year by year as depreciation for Income-tax purposes, *except* where at the date of purchase the steamer or the motor vessel concerned is more than 24 years old. In such a case the rate of depreciation to be allowed will be decided by the Central Board of Revenue on the facts of each case:—

Age at date of purchase.		Expectation of life.	Fractional part of cost to be allowed as depreciation each year.
Over years.	Under years.	Years.	
0	1	20	1/20
1	2	19	1/19
2	3	18	1/18
3	4	17	1/17
4	5	16	1/16
5	6	15	1/15
6	7	14	1/14
7	8	13	1/13
8	9	12	1/12
9	10	11	1/11
10	11	10	1/10
11	12	9	1/9
12	13	9	1/9
13	14	8	1/8
14	15	8	1/8
15	16	7	1/7
16	17	7	1/7
17	18	7	1/7
18	19	6	1/6
19	20	6	1/6
20	21	5	1/5
21	22	5	1/5
22	23	4	1/4
23	24	4	1/4

The scale given above having been applied to find the normal allowance, the extra allowance for war-time conditions will be given on the lines laid down in paragraph 1 above. As the increased allowance for a new vessel is one-fourth of the normal 5 per cent. of cost, the addition in the case of second-hand steamers or motor vessels is to be taken as ¼ of the normal allowance computed by application of the scale.

Example.

A vessel 12 years old was purchased at the commencement of the 'previous year' to year of assessment 1937-38 for Rs. 5,00,000. According to the scale the 'expectation of life' at the date of its purchase second-hand was 9 years.

For the years of assessment 1941-42 onwards the depreciation allowance would be 1/9 of Rs. 5,00,000 = Rs. 55,555.

For years of assessment corresponding to previous years that are chargeable accounting periods for Excess Profits Tax purposes the war-time addition of ¼ referred to in paragraph 1 will be added.

3. *Depreciation on additions to ocean-going steamers and motor vessels which are treated as of a capital nature for Income-tax purposes.*—Any expenditure which has been treated as capital for Income-tax purposes (*e.g.*, the installation of refrigerating plant or the renewal of engines or boilers) will be added to the prime cost of the steamer or the motor vessel concerned for the purpose of computing depreciation allowance.

The annual allowance in respect of such expenditure will be calculated as follows:—

(a) if the expenditure is or was made before the expiration of the 20 years estimated life of the steamer or the motor vessel, the normal allowance for it

will be increased by such a sum as will exhaust or would have exhausted the expenditure over the remaining years of 20 years estimated life;

Example.

An addition of Rs. 60,000 was made to a vessel at the expiration of 17 years of its life. The normal allowance for the addition will be 1/3 of Rs. 60,000=Rs. 20,000 for each of the remaining three years of the vessel's 20 years estimated life;

(b) if the expenditure is or was incurred when the vessel is 20 years old or more, the allowance will be such a sum as will exhaust or would have exhausted the expenditure over the further estimated years of life that would be given by applying the Table in paragraph 2 above, if for "age at date of purchase" there were substituted "age at date of the capital expenditure";

Example.

An addition of Rs. 60,000 was made to a vessel 22 years old. The further estimated life of the vessel, according to the table in paragraph 2 is 4 years. The normal allowance for the addition will, therefore, be ¼ of Rs. 60,000= Rs. 15,000 for each year of the further estimated life of the vessel;

(c) in respect of a vessel purchased second-hand, the normal allowance for the expenditure on additions to such a vessel will be increased by such a sum as will exhaust or would have exhausted the expenditure over the remaining years of the estimated life of the vessel given in the Table in paragraph 2 above.

Example.

A vessel was over 8 years and below 9 years old when purchased second-hand so that its expectation of life at the date of purchase second-hand was 12 years. After the lapse of 7 years of this expectation of life an addition of Rs. 60,000 was made to it. The normal allowance for the addition will be 1/5 of Rs. 60,000=Rs. 12,000 for each of the remaining five years of the expected life of the vessel.

The increased allowance so calculated will be allowed for the years of assessment 1941-42 onwards. The extra allowance for war time conditions will also be given on the lines laid down in paragraph I above, but the aggregate allowances on the additions shall not exceed the cost thereof.

APPENDIX—D

List of Scientific Research Institutions.
[Section 10(2)(xiii)]

Agricultural Research Association.

1. All India Bee Keepers' Association, Ramgarh, District Naini-tal, U.P.
2. Botanical Survey of India, Calcutta.
3. Bombay Natural History Society, Bombay.
4. Central Board of Irrigation, Simla.
5. Current Science Association, Bangalore.
6. Entomological Society of India, Kanpur.
7. Geological Survey of India, Dehra Dun.
8. Imperial Chemical Industries, Calcutta.
9. Indian Council of Agricultural Research, New Delhi.
10. Indian Academy of Science, Bangalore.
11. Omitted.
12. Indian Central Cotton Committee, Bombay.
13. Indian Central Coconut Committee, Ernakulam.
14. Indian Central Jute Committee, Calcutta.
15. Indian Central Oilseeds Committee.
16. Indian Central Sugarcane Committee, New Delhi.
17. Indian Central Tobacco Committee, Bombay.
18. Indian Coffee Board, Bangalore.
19. Indian Chemical Society, Calcutta.

19A. Indian Jute Mills Association, Research Institute, Calcutta.

20. Indian Lac Cess Committee, Ranchi.
21. Indian Rubber Production Board, Kottayam, Travancore State.
22. Indian Science News Association, Calcutta.
23. Indian Society of Genetics Plant Breeding, New Delhi.
24. Indian Society of Soil Science, Calcutta.
25. Indian Tea Association, Calcutta.
26. Indian Tea Market Expansion Board, Calcutta.
27. Meteorological Department, Poona.
28. National Academy of Science, Allahabad.
29. Omitted.
30. Royal Asiatic Society, Calcutta and Bombay.
31. United Planters' Association of South India, Coonoor.
32. Vivekananda Laboratories, Almora.
33. Zoological Survey of India, Calcutta.

Scientific and Industrial Research Association.

1. Ahmedabad Textile Industry's Research Association, Ahmedabad.

1A. B. B. & C. I. Railway Workshop, Ajmer.

2. Bengal Potteries Ltd., Calcutta.
3. Bhowmik (Mr. B. B.), Radan House, 89 Kalighat Road, Calcutta.
4. Biochemical Standardisation Laboratory, Calcutta.
5. Botanical Survey of India, Calcutta.
6. Council of Scientific and Industrial Research, New Delhi.

6A. Indian Association for the Cultivation of Science, Calcutta.

7. Indian Central Cotton Committee, Matunga, Bombay.

8. Indian Crucible Co., Ltd., 16, Sibogopal Banerjee Lane, Salkia, Howrah.
9. Indian Meteorological Department, Delhi.
10. Mysore Iron & Steel Works, Bhadravati.
11. Provincial Broadcasting Department, Madras.
12. Royal Botanical Gardens, Calcutta.
12A. Silk and Art Silk Mills Research Association, Bombay.
13. Tata Iron & Steel Industry, Jamshedpur.

Associations connected with Research work in Medicine.

1. Enquiries conducted under the auspices of the I.R.F.A., New Delhi.
1A. Gujrat Research Society, Bombay.
2. Indian Council of Medical Research, New Delhi.
3. Medical Council of India, New Delhi.
4. Nutrition Research Laboratories, Coonoor.
5 Parlakimedi Trust Fund, New Delhi.
6. Tuberculosis Association of India, New Delhi.

Universities

1. Agra University, Agra.
2. Allahabad University, Allahabad.
3. Andhra University, Guntur.
4. Annamalai University, Annamalainagar.
5. Bombay University (Chemical Technological Department), Bombay.
6. Calcutta University (University College of Science), Calcutta.
7. Omitted.
8. Delhi University, Delhi.
9. Hindu University, Benares.
10. Lucknow University, Lucknow.
11. Madras University, Madras.
12. Muslim University, Aligarh.
13. Mysore University, Bangalore.
14. Nagpur University, Nagpur.
15. Patna University, Patna.
16. East Punjab University, Solon.
17. Travancore University, Trivandrum.
18. Usmania University, Hyderabad (Deccan).
19. Utkal University, Cuttack.
20. Women's University, Bombay.

Colleges.

1. Agricultural College, Kanpur.
2. Omitted.
3. Agricultural College, Nagpur.
4. Agricultural College, Poona.
5. Agricultural College, Sabour, Bihar.
6. Agricultural College, Saidapat.
7. Omitted.
8. Amar Singh K.E.M.U. Jat College, Lakhaoti, U.P.
9. Balwant Agricultural College, Agra.
10. Omitted.
11. Omitted.
12. Indian School of Mines, Dhanbad.
13. Omitted.
14. Khalsa College, Amritsar.
15. King George's Medical College, Lucknow.
16. Presidency College, Calcutta.
17. Presidency College, Madras.
18. Recognised Medical Colleges.
19. Science College, Patna.
20. Tropical School of Medicine, Calcutta.
21. Veterinary College, Bengal.
22. Omitted.
23. Veterinary College, Madras.
24. Veterinary College, Patna.
25. Veterinary College, Poona.

Institutions.

1. Agricultural Research Institute and College, Coimbatore.
2. Allahabad Agricultural Institute, Allahabad.
3. Omitted.

4. Bengal Tanning Institute, Calcutta.
5. Bose Research Institute, Calcutta.
6. Central Irrigation Research Institute, Poona.
7. Central Research Institute, Trivandrum.
8. Forest Research Institute and College, Dehra Dun.
9. Government Silk Institute, Nathnagar, Bhagalpore.
10. Indian Agricultural Research Institute, New Delhi.
11. Indian Dairy Research Institute, Bangalore.
12. Indian Veterinary Research Institute, Izatnagar and Muktesar, U.P.
13. Indian Institute of Sugar Technology, Kanpur
14. Omitted.
15. Indian Institute of Science, Bangalore.
16. Indian Statistical Institute, Calcutta.
17. Institute of Agriculture, Anand.
18. Institute of Plant & Industry, Indore.
19. Omitted.
20. Laxmi-Narain Institute of Technology, Nagpur.
21. National Institute of Science in India, Calcutta.
22. Nutritional Research Institute, Coonoor.
23. River Research Institute, Bengal, Calcutta.
24. Indian Institute of Science, Bombay.
25. Silk Research Institute, Berhampore.
26. Tata Institute of Fundamental Research, Bombay.
27. Technological Institute, Baroda.
28. Victoria Jubilee Technical Institute, Bombay
29. Vishvabharati Institute, Calcutta.

APPENDIX—E

List of Institutions and Funds Approved for Section 15B.

1. Gandhi National Memorial Fund.

Educational Institutions
Universities.

2. Andhra University.
3. Annamalai University, Annamalainagar.
4. Madras University, Madras.
5. Bombay University, Bombay.
6. Gujerat University Trust.
7. Karnatak University.
8. Poona University, Poona.
9. Shreemati Nathibai Damodher Thackersey Indian Women's University, Bombay.
10. Calcutta University, Calcutta.
11. Agra University, Agra.
12. Allahabad University, Allahabad.
13. Hindu University, Benares.
14. Lucknow University, Lucknow.
15. Muslim University, Aligarh.
16. East Punjab University, Solon.
17. Patna University, Patna.
18. Utkal University, Cuttack.
19. Delhi University, Delhi.
20. Nagpur University, Nagpur.

Colleges Affiliated to Universities.
Bombay University.

21. American Marathi Mission's College, Ahmednagar.
22. Basaweshwar College, Bagalkot.
23. Bhartya Vidyabhavan's Arts and Science College, Andheri.
24. Charotar Vidya Mandal's College, Anand.
25. Brihan Maharashtra College of Commerce, Poona.
26. Chhatrapati Shivaji College, Satara.
27. College of Agriculture, Anand.
28. College of Engineering, Kupwad.
29. College of Pharmacy, Ahmedabad.
30. Ferguson College, Poona.
31. H. L. College of Commerce, Ahmedabad.
32. H. P. T. College, Nasik.
33. Jagadguru College of Commerce, Hubli.
34. Jethabhai and Javerbhai Science College, Nadiad.
35. K. E. Board's Arts College, Dharwar.
36. Khalsa College, Matunga, Bombay.
37. Law College, Poona.
38. D. A. V. College, Sholapur.
39. Lingarat College, Belgaum.
40 Maharashtra Education Society's College, Poona.
41. Maharashtra Girls' Education Society's College for Girls, Poona.
42 Moolji Jaitha College, Jalgaon, East Khandesh.
43. M. T. B. College, Surat.
44. Narayanarao Topiwalla College, Bassein.
45. Nowrosji Wadia College, Poona.
46. Pratap College, Amalner, East Khandesh.
47. R. A. Poddar College of Commerce, Matunga, Bombay.
48. Raja Lakhamagauda Law College, Belgaum.
49. Sarvajanik Law College, Surat.
50. R. P. Gogate College, Ratnagiri.
51. Ramnarain Ruia College, Matunga, Bombay.
52. Sheth G. S. Medical College, Parel, Bombay.
53. Sheth L. L. Arts College, Ahmedabad.

54. Sidharth College, Bombay.
55. Sir Kikabhai Premchand College of Commerce, Surat.
56. Sir Lallubhai Shah Law College, Ahmedabad.
57. Sir Parashurambhau College, Poona.
58. Sophia College for Women, Bombay.
59. St. Xavier's College, Bombay
60. Tilak College, Bombay.
61. Topiwala National Medical College, Bombay.
62. Victoria Jubilee Technical Institute, Matunga.
63 Vijaiy College, Bijapore.
64. Willington College, Sangli.
65. Wilson College, Bombay.
66. Gujarat Vernacular Society, Ahmedabad.
67. Kaivalyadhama Shreeman Madhva-Joga Mandira Samiti, Lonavala.

Madras.

68. All Colleges in the Province of Madras affiliated to the Universities in that Province.
69. Sri Saradaniketanam, Guntur
70 Vinayasram, Guntur.
71. Sri Krishnasram, Guntur
71A Indian Institute of Science, Bangalore.

West Bengal.

72 All Colleges in West Bengal affiliated to the Calcutta University.

United Provinces.

(Colleges affiliated to Universities in that Province).

73. Agra College, Agra.
74. Balwant Rajput College, Agra.
75. Bareilly College, Bareilly.
76. Bureau of Psychology, Allahabad.
77. Christ Church College, Kanpur.
78. D. A. V. College, Dehradun.
79. D. A. V. College, Kanpur.
80. Govt. Ghanand Intermediate College, Mussoori.
81. Govt. Girls Intermediate College, Bareilly.
82. Govt. Intermediate College, Allahabad.
82A. Govt. Intermediate College, Almora.
83. Govt. Intermediate College, Banaras.
84 Govt. Intermediate College, Etawah.
85. Govt. Intermediate College, Fyzabad.
86. Govt. Intermediate College, Lansdowne.
87. Govt. Intermediate College, Lucknow.
88. Govt Intermediate College, Moradabad.
89. Govt. Intermediate College, Naintal.
90 Govt. College of Physical Education, Allahabad.
91. Govt Training College for Men, Agra
92 Govt Training College for Men, Allahabad.
93 Govt. Training College for Men, Bareilly.
94 Govt Training College for Men, Benaras.
95 Govt Training College for Men, Lucknow
96. Govt. Training College for Women, Allahabad
97. Govt Training College for Women, Benaras.
98 Govt. Training College for Women, Lucknow.
99 H S. E. E. M. U. Jat College, Lakhauti (Bulandshahr).
100. Isabella Thoburn College, Lucknow.
101. Meerut College, Meerut.
102. S. D. College, Kanpur.
103 St. Andrews College, Gorakhpur.
104. St. Johns College, Agra.
105 Women's College, Aligarh.

East Punjab.

106. Ahir College, Rewari.
107. All India Jat Heroes Memorial College, Rohtak.
108. A. S. College, Khanna.
109. Arya College, Ludhiana.
110. Baring College, Batala.

111. D. A. V. College, Ambala, City.
112. D. A. V. College, Hoshiarpur.
113. D. A. V. College, Jullundur.
114. D. C. Jain College, Ferozepur.
115. Dev Samaj College for Women, Ferozepur.
116. D. M. College, Moga.
117. Doaba College, Jullundur.
118 East Punjab Camp College, New Delhi.
119. E. P. Engineering College, Roorkee.
120. Gandhi Memorial College, Ambala Cantt.
121. Glancy Medical College, Amritsar.
122. Hindu Sabha College, Amritsar.
123. Kanya Mahavidyalaya, Jullundur.
124. K. G R. I. M. College, Jullundur.
125. Khalsa College, Amritsar
126. Khalsa College, Mahilpur.
127. Lady Harding Medical College, New Delhi.
128. Lyallpur Khalsa College, Jullundur.
129. Munshi Ram Intermediate College, Fazilka
130. R. S. D. College, Ferozepur.
131. S. A Jain College, Ambala City.
132. S. D. College (Lahore), Ambala Cantt.
133. Shri Rama Padamchand, S D. College, Simla.
134. Shri Karansingh Ji College, Mirpur.
135. S. N. College, Qadian.
136. Startford College for Women Amritsar.
137. Vaish College, Bhiwani.
138 Vaish College, Rohtaq.

Orissa.

139. Orissa Medical College, Cuttack

Utkal University.

Arts Colleges at—

140. Cuttack.
141. Balangir.
142. Balasore.
143. Jaipur.
144. Puri.
145. Khalikot.
146. Jaipur.
147. Parlakemehdi.
148. Sambhalpur.
149. Sanskrit College, Orissa.

Delhi—(Colleges affiliated to the University of Delhi)—

150. Commercial College, Delhi.
151. Hindu College, Delhi.
152. Inderprastha Girls College Delhi.
153. Lady Irwin College, Delhi.
154. St. Stephen's College, Delhi.
155. Ramjas College, Delhi.
156. Tibbia College, Delhi.

Hospitals.

Madras—

157. Leper Asylum, Kesarapalli, Kishna Distt.
158. Missionary Medical College Hospital, Vellore.
159. Maternity Home, Gudivada.
160. Prema Samajam, Vizagapatam.
161 Leper Asylum, Ramachandrapuram, East Godavari District.
162. St. Anne's Hospital, Bezwada
163. St Anne's Hospital, Kumbakonam.
164 St. Theresas Hospital, Kurnool.
165 T. B. Sanatorium, Visranthipuram.

Bombay.

166. Acworth Leper Home, Matunga, Bombay.
167. Bai Jerbai Wadia Hospital for Children, Bombay.
168. City Fever (Infectious Diseases) Hospital, Bombay.
169. Grant Medical College, Bombay.
170. Haffkine Institute, Parel, Bombay.
171. J. J. Group of Hospitals, Bombay.
172 King Edward VII Memorial Hospital, Bombay.
173. Miraj Medical Centre, Miraj.
174. Nowroji Wadia Maternity Hospital, Bombay.

175. Provincial Council of Blindness, c/o Sir C. J. Opthalmic Hospital, Bombay.
176. R.P.T.B. Hospital, Bombay.
177. Sassoon Hospitals, Poona.
178. Sir Wanless T. B. Sanatorium, Wanless Wadi.
179. St. Luke's Hospital, Vengurla.
180. Tata Memorial Hospital, Bombay.

West Bengal.

181. Albert Victor Leper Hospital, Calcutta.
182. Bengal Tuberculosis Association, Calcutta.
183. Calcutta Medical Aid Research Society, Calcutta.
184. Calcutta Medical School and Hospital, Calcutta.
185. Chittaranjan Cancer Hospital, Calcutta.
186. Graham's Homes, Kalimpong.
187. Jadavpur Tuberculosis Hospital, Jadavpur.
188. Mayo Hospital, Calcutta.
189. St. Joseph's Convent.
190. St. Joseph's Infirmary, Loreto Convent, Calcutta.

United Provinces.

191. Alice Horseman M. Dufferin Hospital, Kanpur.
192. Balrampur Hospital, Lucknow.
193 Civil Hospital, Allahabad.
194. Civil Hospital, Mussoori.
195. Colvin Hospital, Mussoori.
196. Doon Hospital, Dehra Dun.
197. Dufferin Hospital, Allahabad.
198. Dufferin Hospital, Lucknow.
199. Government T. B. Clinic, Allahabad.
200. Hellet Hospital, Kanpur.
201. I. D. Hospital, Lucknow.
202. Kamala Nehru Hospital, Allahabad.
203. King Edward VII Hospital, Benares.
204. King Edward Sanatorium, Bhowalli.
205. King English Hospital, Lucknow.
206. King Georges Hospital, Lucknow.
207. Lady Kinnaird Hospital, Lucknow.
208. Leper Hospital, Lucknow.
209. M. D. Eye Hospital, Allahabad.
210. Mental Hospital, Agra.
211. Mental Hospital, Bareilly.
212. T. B. Sanatorium, Almora.
213. T. B. Sanatorium, Gethia.

East Punjab.

214. Dayanand Ayurvedic College & Hospital, Amritsar.
215. King Edward Sanatorium, Dharampur.
216. Lady Linlithgow Sanatorium, Kasauli.
217. Lady E. S. C. Maternity Hospital, Amritsar.
218. Leper Asylum, Sabathu.
219. Leper Asylum, Tarn Taran.
220. Maternity Hospital, Ludhiana.
221. Mission Memorial Hospital, Ludhiana.
222. R.B.G.M Kesar Devi T. B. Sanatorium, Amritsar.
223. Shrimati G. Devi Memorial T. B. Hospital, Simla.

Assam.

224. Tuberculosis Association of Assam.

Ajmer.

225. Victoria Hospital, Ajmer.

Delhi.

226. T. B. Association of India, New Delhi.

Additions since October, 1948.

227. Ahmedabad Education Society, Ahmedabad.
228. Tilak Maharashtra Vidyapith, Poona.
229. School of Tropical Medicine, Calcutta.
230. Shri Ram Institute for Industrial Research, Delhi.

231. The Madras Institute of Technology, Mylapore, Madras.
232. Indian National Committee of the United Nations Appeal for Children.
233. Shri Bhuriben Lalubhai Medical Trust, Ahmedabad.
234. Gujarat Famine Relief Committee, Ahmedabad.
235. Union Mission Tuberculosis Sanatorium, Madanapalle.
236. Rama Krishna Mission Students' Home, Mylapore, Madras.
237. Rama Krishna Mission Tuberculosis Clinic, Delhi.
238. Vikas Griha, Ahmedabad.
239. Gandhi Gram, Chinnalapatti, Madura District, Madras.
240. Harijan Ashram, Allahabad.
241. Karmakshetra Educational Foundation, Ahmedabad.
242. Dr. Balabhai Nanavati Hospital, Bombay.
243. Peoples' Education Society, Maharashtra High School, Bombay.
244. Rama Krishna Mission's Charitable Dispensary, Delhi.
245. Rama Krishna Mission's Reading Room & Library, Delhi.
246. Bombay Presidency Women's Council, Bombay.
247. The Queen Mary's Technical School of disabled Indian Soldiers, Park Road, Kirkee, Poona—3.
248. Nagpur Mahavidyalaya, Nagpur.
249. Hislop College, Nagpur.
250. College of Science, Nagpur.
251. University College of Law, Nagpur.
252. University Training College, Nagpur.
253. College of Agriculture, Nagpur.
254. S. B. City College, Nagpur.
255. Ram Krishna Mission Charitable Dispensary, Belur.
256. Ram Krishna Mission Sishumangal Pratisthan, Calcutta.
257. Government Engineering School, Nagpur.
258. National College, Nagpur.
259. G. S. College of Economics and Commerce, Nagpur.
260. Central College for Women, Nagpur.
261. Kanara College Society, Kumta.
262. Vidarbha Mahavidyalaya, Amraoti.
263. G. S. College of Commerce, Wardha.
264 Sitabai Arts College, Akola.
265. Rajasthan Aryan College, Basim.
266. Shri Shivaji College, Amraoti.
267. Laxminarayan Institute of Technology, Nagpur.
268. The Delhi School of Economics, University of Delhi.
269. G. S. College of Science and Agriculture, Khamgaon.
270. Blind Relief Association, Bombay.
271. Bhagini Samaj, Bombay.
272. All India Lighthouse for the Blind, Calcutta.
273. Victoria Memorial School for the Blind, Bombay.
274. Government Diploma Training Institute for Men, Amraoti.
275 Government Diploma Training Institute for Women, Amraoti.
276. National Young Women's Christian Association of India, Burma & Ceylon, Bombay.
277. Rani Parvatidevi College, Belgaom.
278. Medical College, Nagpur.
279 The Vishveshvaranand Vedic Research Institute, Hoshiarpur.
280 Kashmir Operations Relief Fund Committee, New Delhi.
281. Indian Hockey Federation, Bombay.
282. Indian Council of World Affairs, New Delhi.
283. Rama Krishna Mission Ashram Charitable Dispensary, Khar, Bombay.
284. Ram Krishna Mission Sevashram, Brindaban.
285. The College of Indian Medicine, Madras.
286. The School of Indian Medicine, Madras.

287. The Tuberculosis Sanatorium, Perunthurai.
288. Rishi Valley Trust, Rajghat, Benares.
289. Rama Krishna Mission's Dispensary, Salem.
290. Rama Krishna Mission Sevashram's Hospital, Kankhal.
291. Visva-Bharati, Santiniketan.
292 Colleges affiliated to the Patna University.
293. Saugar University, Saugar.
294. Harijan Sevak Sangh, Delhi.
295. The Society for the Rehabilitation of Disabled & Crippled Children, Bombay.
296. All India Women's Conference, Bombay.
297. Cancer Relief Fund, Madras.
298. Gandhi Eye Hospital Trust, Aligarh.
299. Hindustani Culture Society, Allahabad.
300. Hansraj College, New Delhi.
301. Gujrat Famine Relief Committee, Bombay.
302 The Ramakrishna Mission Home of Service, Banaras.
303. Andhra Historical Research Society, Rajahmundry.
304. Indian Women's Aid Society Hospital, Hubli.
305. Peoples Mobile Hospitals, Bombay.
306. Marwari Relief Society's Hospital, Upper Chitpur Road, Calcutta.
307 Hindu Deen Daya Sangh, Bombay.
308. Gujrat Research Society, Bombay.
309. Hingne Shree-Shikshan Samstha, Hingne Budruk, Poona.
310. The Indian Society of Agricultural Economics, Bombay.
311. Ramakrishna Mission Relief Fund, Khar, Bombay.
312. The Madras Provincial Welfare Fund Madras.
313. Telegaon General Hospital and Convalescent Home, Telegaon-Dabhade, Dist. Poona.
314. Bharat Kala Bhawan, Banaras.
315. Kasturba-Gandhi National Memorial Trust, Wardha.
316. Ayurvidya Parsvat Mandal, Bombay.
317. Sri Ramkrishna Mission Vidyalaya College Section Fund, Coimbatore.
318. Bala Mandir (Founding Hospital), Madras.
319 The Pasteur Institute of Southern India, Coonoor.
320 The Social Service League, Bombay.
321. Society for the Protection of Children in Western India, Bombay.
322 The Seva Sadan Society, Bombay.
323. The Vigyan Kala Bhawan, Daurala.
324. The Bharatiya Vidya Bhavan, Bombay.
325. The Kishori Raman Degree College, Mathura.
326. The New Engineering College, Sangli.
327. The K. E. M. Hopital and Sardar Moodliar Dispensary, Poona.
328. The Kutch Famine Relief Committee, Bombay.
329. The Poona Seva Sadan Society, Poona City.
330. The Tuberculosis Association of Madras, Madras.
331. The Poona School and Home for the Blind, Poona.
332. Digamber Jain College, Baraut
333. The Eye Infirmary attached to the Sri Ramakrishna Vivekananda Sevashram, Muzaffarpur.
334. Prince of Wales Museum of Western India.
335. B. V. Bhoomraddi College of Engineering & Technology, Hubli.
336 Vanita Vishram, Bombay.
337. Birla Vishvakarma Mahavidyalaya, Anand.
338. Gauhati University.
339 Assam Medical College, Dibrugarh.

340. Assam Agricultural College, Jorhat.
341. Assam Medical College & Hospital, Dibrugarh.
342. University of Roorkee.
343. Lord Reay Maharashtra Industrial Museum, Poona.
344. Governor's Andhra Cyclone Relief Fund, Madras.
(The approval for this institution will be valid up to the end of December 1950).
345. The Sevashram Hospital, Broach.
346. Delhi College, Delhi.
347. Miranda House (University College for Women), Delhi.
348. Dharma Samaj College, Aligarh
349. Ramakrishna Mission Institute of Culture, Calcutta.
350. Vidyamandir attached to the Ramkrishna Mission Sarada Pitha, P.O. Belur Math.
351. Ramakrishna Mission Provident Relief Fund, Calcutta.
352. MacLaren Leper Hospital, Dehra Dun.
353. Government Agricultural College, Kanpur.
354. Rishi Dayaram and Seth Hassaram National College, Bandra.
(This has been approved only for the period up to 19th June 1950.)
355. Delhi School of Social Work, Delhi.
356. Telugu Basha Samiti, Madras.
357. The Ramakrishna Mission East Bengal Refugee Relief Fund, New Delhi.
358. Pradnya Pathshala Mandal, Wai, (District Satara).
359. The United Council of Relief and Welfare, Bengal Centre, Calcutta.
360. The Gurukula University, Kangri, Hardwar.
361. Jyoti Sangh, Ahmedabad.
362. Shree Nilkantheshwar College, Khandwa.
363. Ramakrishna Mission T. B. Sanatorium P.O. Hatia, Ranchi.
364. S. L. Marwari Hindu Hospital, Benares City (U.P.).
365. Banasthali Vidyapith, Banasthali (Jaipur).
366. The Council of Y.M.C.A's India, Pakistan, Burma and Ceylon, Calcutta.
367. The Indian Red Cross Society (Excluding its State & District Branches & the various other funds administered by it).
368. The St. John Ambulance Association (India).
369. The Hind Kusht Nivaran Sangh (Indian Leprosy Association)
370. National Defence Academy, Kharakvasla.
371. Birla Engineering College (Mechanical & Electrical), Pilani.
372. Birla College of Arts, Science and Commerce, Pilani.
373. Clara Swain Hospital, Bareilly
374. Saran Ashram Hospital, Dayalbagh, Agra.
375. Indian Library Association, Delhi.
376. The Marwari Relief Society's East Bengal Refugee Fund, Calcutta.
377. The Mahatma Gandhi Memorial Tuberculosis Sanatorium Endowments Fund, Tanjore
378. Women's Education Trust Fund, Baroda.
379. ——
380. Rajaji Tuberculosis Sanatorium, Tiruchirapalli.
381. Victoria Hospital for Women and Children, Visakhapatnam.
382. Vidya Bhawan Govind Ram Sakesria Teacher's Training College, Udaipur.
383. The Children's Aid Society, Bombay.
384. Society for the Protection of Children in India, Calcutta
385. Ramkrishna Mission Hospital Patna.
386. The Mission to Lepers, Faizabad.
387. Assam Governor's Earthquake Relief Fund, Assam.

THE INDIAN INCOME-TAX ACT, 1922

(Act XI of 1922)

As amended up to 30th September, 1950.

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

1. SHORT TITLE, EXTENT AND COMMENCEMENT.—(1) This Act may be called the Indian Income-tax Act, 1922.

(2) It extends to the whole of India, except the State of Jammu and Kashmir, and applies also within that State to all persons in the service of the Government of India or the Government of any State other than the State of Jammu and Kashmir.

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

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

(1) " agricultural income " means—

(*a*) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in the taxable territories or subject to a local rate assessed and collected by officers of the 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 immediately 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 storehouse or other out-building;

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

(3) " Appellate Assistant Commissioner " means a person appointed to be an Appellate Assistant Commissioner of Income-tax under Section 5;

(3A) Omitted.

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

(4A) " Capital asset " means property of any kind held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation;

(ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;

(iii) any land from which the income derived is agricultural income;

(4B) " the Central Board of Revenue " means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924).

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

(6) " company " means—

(i) any Indian company, or

(ii) any association, whether incorporated or not and whether Indian or non-Indian, which is or was assessable, or was assessed, as a company for the assessment for the year ending on the 31st day of March, 1948, or which is declared by general or special order of the Central Board of Revenue to be a company for the purposes of this Act;

(6A) " dividend " includes—

(*a*) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;

(*b*) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not;

(*c*) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company;

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included; and

(*d*) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not;

Provided that ' dividend ' does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (c) or (d).

Provided further that the expression " accumulated profits " wherever it occurs in this clause shall not include capital gains arising before the 1st day of April, 1946 or after the 31st day of March, 1948.

(6AA) " earned income " means any income of an assessee who is an individual, Hindu undivided family, unregistered firm or other association of persons not being a company, a local authority, a registered firm or a firm treated as registered under clause (b) of sub-section (5) of section 23—

(*a*) which is chargeable under the head " Salaries "; or

(*b*) which is chargeable under the head " Profits and gains of business, profession or vocation " where the business, profession or vocation is carried on by the assessee or, in the case of a firm, where the assessee is a partner actively engaged in the conduct of the business, profession or vocation; or

(*c*) which is chargeable under the head " Other sources " if it is immediately derived from personal exertion or represents a pension or superannuation or other allowance given to the assessee in respect of his past services or the past services of any deceased person;

and includes any such income which, though it is the income of another person, is included in the assessee's income under the provisions of this Act, but does not include any such income which is exempt from tax under sub-section (2) of Section 14 or under notification issued under Section 60;

(6B) " firm ", " partner " and " partnership " have the same meanings respectively as in the Indian Partnership Act, 1932 (IX of 1932); provided that the expression ' partner ' includes any person who being a minor has been admitted to the benefits of partnership,

(6C) " income " includes anything included in ' dividend ' as defined in clause (6A) and anything which under Explanation 2 to sub-section (1) of Section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of Section 10 and any Capital gain chargeable according to the provisions of Section 12B and the profits of any business of insurance carried on by a mutual insurance association computed in accordance with Rule 9 in the Schedule;

(6D) " Inspecting Assistant Commissioner " means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under Section 5;

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

(7A) " Indian company " means a company as defined in the Indian Companies Act, 1913, or a company formed and registered under a law in force in any of the merged states the registered office of which is situate in the taxable territories;

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

(8A) Omitted.

(9) " person " includes a Hindu undivided family and a local authority;

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

(11) " previous year " means in respect of any separate source of income, profits and gains—

(*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 have so been made up:

Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression " previous year " as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer 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; or

(*c*) where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the 31st day of March next following or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up to some other date than the 31st day of March and the case is not one for which a period has been determined by the Central Board of Revenue under sub-clause (b), then at the option of the assessee, the period from the date of the setting up of the business, profession or vocation to such other date;

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it shall be deemed that there is no previous year; and

when the assessee is a partner in a firm, 'previous year' in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm;

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

(a) the secretary, treasurer, manager or agent of the authority, company, body or association; or

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

(13) " public servant " has the same meaning as in the Indian Penal Code (XLV of 1860);

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

(14A) " taxable territories " means—

(a) as respects any period before the 15th day of August, 1947, the territories then referred to as British India, but including Berar,

(b) as respects any period after the 14th day of August, 1947, and before the 26th day of January, 1950, the territories for the time being comprised in the Provinces of India, but excluding the merged territory of Cooch-Behar,

(c) as respects any period after the 25th day of January and before the 1st day of April, 1950, the territories comprised in Part A States, but excluding the merged territory of Cooch-Behar, and the territories comprised in Part C States, but excluding the States of Manipur, Tripura and Vindhya Pradesh,

(d) as respects any period after the 31st day of March, 1950, and before the 13th day of April, 1950, the territory of India excluding the State of Jammu and Kashmir and the Patiala and East Punjab States Union, and

(e) as respects any period after the 12th day of April, 1950, the territory of India excluding the State of Jammu and Kashmir :

Provided that the taxable territories shall be deemed to include—

(a) the merged territories—

(i) as respects any period after the 31st day of March, 1949, for any of the purposes of this Act, and

(ii) as respects any period included in the previous year, for the purpose of making any assessment for the year ending on the 31st day of March, 1950, or for any subsequent year; and

(b) the whole of the territory of India excluding the State of Jammu and Kashmir—

(i) as respects any period, for the purposes of Sections 4A and 4B,

(ii) as respects any period after the 31st day of March, 1950, for any of the purposes of this Act, and

(iii) as respects any period included in the previous year for the purpose of making any assessment of the year ending on the 31st day of March, 1951, or for any subsequent year;

(15) " total income " means total amount of income, profits and gains referred to in sub-section (1) of Section 4 computed in the manner laid down in this Act, and

" total world income " includes all income, profits and gains wherever accruing or arising except income to which, under the provisions of sub-section (3) of Section 4, this Act does not apply and except any capital gain which is not includible in the total income of an assessee.

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

CHAPTER I

Charge of Income-Tax

3. CHARGE OF INCOME-TAX—Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or members of the association individually.

4. APPLICATION OF ACT—(1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which—

(a) are received or are deemed to be received in the taxable territories in such year by or on behalf of such person, or

(b) if such person is resident in the taxable territories during such year,—

(i) accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year, or

(ii) accrue or arise to him without the taxable territories during such year, or

(iii) having accrued or arisen to him without the taxable territories before the beginning of such year and after the 1st day of April, 1933, are brought into or received in the taxable territories by him during such year, or

(c) if such person is not resident in the taxable territories during such year, accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year:

Provided that there shall not be included in any assessment for the year ending on the 31st day of March, 1940, both the amount of the income, profits and gains referred to in sub-clause (ii) of clause (b) and the amount of the income, profits and gains referred to in sub-clause (iii) of clause (b) but only the greater of these two amounts:

Provided further that, in the case of a person not ordinarily resident in the taxable territories, income, profits and gains which accrue or arise to him without the taxable territories shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in the taxable territories by him during such year :

Provided further that if in any year the amount of income accruing or arising without the taxable territories exceeds the amount brought into the taxable territories in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees.

Explanation 1.—Income, profits and gains accruing or arising without the taxable territories shall not be deemed to be received in or brought into the taxable territories within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance sheet prepared in the taxable territories.

Explanation 2.—Income which would be chargeable under the head "Salaries" if payable in the taxable territories shall be deemed to accrue or arise in the taxable territories wherever paid if it is earned in the taxable territories.

Explanation 3.—A dividend paid by an Indian Company without the taxable territories shall be deemed to be income accruing and arising in the taxable territories to the extent to which it has been paid out of profits subjected to income tax in the taxable territories.

Explanation 4.—For the purposes of sub-clause (iii) of clause (b) of sub-section (1), income, profits and gains accruing, or arising, in any of the merged territories or any Part B States other than the State of Jammu and Kashmir before the beginning of a previous year and after the 1st day of April, 1933, shall be deemed to be brought into, or received in the taxable territories during such year if, and only if, they are brought into, or received in, any part of the taxable territories other than that merged territory or State during such year;

(2) For the purposes of sub-section (1), where a husband is not resident in the taxable territories remittances received by his wife resident in the taxable territories out of any part of his income which is not included is his total income shall be deemed to be income accruing in the taxable territories to the wife.

(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them.

(*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.

(*ia*) Any income derived from business carried on, on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

(*a*) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(*b*) the work in connection with the business is mainly carried on by beneficiaries of the institution.

(*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 except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area.

(*iv*) Interest on securities which are held by, or are the property of, any Provident Funds to which the Provident Funds Act, 1925 (XIX of 1925), applies and any capital gains of the Fund arising from sale, exchange or transfer of such securities.

(*v*) *Omitted by Act VII of 1939.*

(*vi*) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(*vii*) Any receipts not being capital gains chargeable according to the provisions of Section 12B and 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.

(*viii*) Agricultural income.

(*ix*) Any income received by trustees on behalf of a recognised provident fund as defined in clause (*a*) of Section 58A.

(*x*) Any income received—

(*a*) by the Ruler of an Indian State as his privy purse under article 291 of the constitution;

(*b*) by a Consul General, Consul, Vice-Consul or Consular Agent of a foreign State, as remuneration from such State for service in such capacity;

(*c*) by a person employed by the consulate of a foreign State, not being a Citizen of India, as remuneration from such foreign State for service in such capacity;

(*d*) by a Trade Commissioner or other official representative in the taxable territories of the Government of any part of the Commonwealth or of a foreign Government, as his official salary, if the official salary of the corresponding officials, if any, of the Central Government resident for similar purposes in the country concerned enjoy a similar exemption in that country;

(*e*) by a member of the staff of a Trade Commissioner or official representative referred to in sub-clause (d), as his official salary, when such member is a subject of the country represented, and the country represented has made corresponding provisions for similar exemptions in the case of members of the staff of the corresponding officials of the Central Government.

(*xi*) With effect from the 2nd day of September, 1939, the income chargeable under the head " salaries " of a Nepalese member of the Nepalese Military Force serving with State or, after the Commencement of the constitution with the Armed Forces, of the Union or of any member of an Indian State Force so serving, and any other income accruing or arising without the taxable territories which is received in or brought into the taxable territories by any such member while the Force to which he belongs is serving with State or, after the Commencement of the constitution with the Armed Forces, of the Union.

(*xii*) Any income chargeable under the head " Income from House Property " in respect of a building the erection of which is begun and completed between the 1st day of April, 1946 and the 31st day of March, 1952 (both dates inclusive), for a period of two years from the date of such completion.

(*xiii*) Any income of a scientific research association which is, for the time being, approved for the purposes of clause (xiii) of sub-section (2) of Section 10 where the income is applied solely to the purposes of that association and accrues or arises after the 31st day of March, 1949.

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, but nothing contained in clause (*i*) clause (*ia*) or clause (*ii*) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not ensure for the benefit of the public.

4A. RESIDENCE IN THE TAXABLE TERRITORIES.—For the purposes of this Act—

(*a*) any individual is resident in the taxable territories in any year if he—

(*i*) is in the taxable territories in that year for a period amounting in all to one hundred and eighty-two days or more; or

(*ii*) maintains or has maintained for him a dwelling place in the taxable territories for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in the taxable territories for any time in that year; or

(*iii*) having within the four years preceding that year been in the taxable territories for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in the taxable territories for any time in that year otherwise than on an occasional or casual visit; or

(*iv*) is in the taxable territories for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in the taxable territories during that year is likely to remain in the taxable territories for not less than three years from the date of his arrival;

(*b*) a Hindu undivided family, firm or other association of persons is resident in the taxable territories unless the control and management of its affairs is situated wholly without the taxable territories; and

(*c*) a company is resident in the taxable territories in any year (*a*) if the control and management of its affairs is situated wholly in the taxable territories in that year, or (*b*) if its income arising in the taxable territories in that year exceeds its income arising without the taxable territories in that year account not being taken in either case of income chargeable under the head "Capital Gains."

4B. ORDINARY RESIDENCE.—For the purposes of this Act—

(*a*) an individual is "not ordinarily resident" in the taxable territories in any year if he has not been resident in the taxable territories in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in the taxable territories for a period of, or for periods amounting in all to, more than two years;

(*b*) a Hindu undivided family is deemed to be ordinarily resident in the taxable territories if its manager is ordinarily resident in the taxable territories;

(*c*) a company, firm or other association of persons is ordinarily resident in the taxable territories if it is resident in the taxable territories.

CHAPTER II

Income-Tax Authorities.

5. INCOME-TAX AUTHORITIES.—(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 who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax.

(*d*) Income-tax Officer.

(2) The Central Government may appoint a Commissioner of Income-tax for any area specified in the order of appointment, and may appoint Commissioners of Income-tax, not more than three in all, each to discharge, without reference to area, and to the exclusion of any Commissioner appointed for any area, the functions of a Commissioner in respect of any cases or classes of cases assigned to him by the Central Board of Revenue.

(3) The Central Government may appoint as many Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit.

(4) Appellate Assistant Commissioners of Income-tax shall be under the direct control of the Central Board of Revenue and shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of such areas as the Central Board of Revenue may direct, and, where such directions have assigned to two or more Appellate Assistant Commissioners of Income-tax, the same persons or classes of persons or the same incomes or classes of income or the same area in accordance with any orders which the Central Board of Revenue may make for the distribution and allocation of the work to be performed.

(5) Inspecting Assistant Commissioners of Income-tax and Income-tax Officers shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of such areas as the Commissioner of Income-tax may direct, and, where such directions have assigned to two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers, the same persons or classes of persons or the same incomes or classes of income or 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, with the previous approval of the Central Board of Revenue, by general or special order in writing, direct that the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Inspecting 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 Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner, respectively.

(6) The Central Board of Revenue may, by notification in the official Gazette, empower Commissioners of Income-tax, Appellate or Inspecting 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 or such area as may be specified in the notification, and thereupon the functions so specified shall cease to be performed in respect of the specified classes of persons or classes of income or area by the other authorities appointed under sub-sections (2) and (3).

(7) Assistant Commissioners of Income-tax and Income-tax Officers shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax for the area in which they perform their functions, or where they perform functions assigned to them by a Commissioner of Income-tax appointed without reference to area, to that Commissioner.

(7A) The Commissioner of Income-tax may transfer any case from one Income-tax officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Income-tax Officer from whom the case is transferred.

(8) All Officers and persons employed in the execution of this Act shall observe and follow the orders instructions and directions of the Central Board of Revenue:

Provided that no such orders instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

CHAPTER IIA

Appellate Tribunal

5A. THE APPELLATE TRIBUNAL.—(1) The Central Government shall appoint an Appellate Tribunal consisting of as many persons it thinks fit to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of judicial members and accountant members as hereinafter defined :

Provided that the Tribunal shall not be deemed to be invalidly constituted merely by reason of a temporary inequality caused by the death, retirement or removal of any member.

(3) A judicial member shall be a person who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge; and an accountant member shall be a person who has, for a period of not less than six years, practised professionally as a Registered Accountant enrolled on the Register of Accountants maintained by the Central Government under the Auditor's Certificate Rules, 1932 :

Provided that the Central Government may appoint as an accountant member of the Tribunal any person not possessing the qualifications required by this sub-section if it is satisfied that he has qualifications and has had adequate experience of a character which render him suitable for appointment to the Tribunal.

(4) The Central Government shall appoint a judicial member of the Tribunal to be president thereof.

(5) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted from members of the Tribunal by the president of the Tribunal.

(6) Save as hereinafter provided a Bench shall consist of one Judicial Member and one Accountant Member :

Provided that the President or any other member of the Tribunal specially authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Income-tax Officer in the case does not exceed Rs. 15,000 :

Provided further that the President may, for the disposal of any particular case, constitute a special Bench consisting either of two Judicial Members and one Accountant Member or of one Judicial Member and two Accountant Members.

(7) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the president of the Tribunal for hearing on such point or points by one or more of the other members of the Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure, and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions including the places at which the Benches shall hold their sittings.

CHAPTER III

Taxable Income

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

(i) Salaries.
(ii) Interest on securities.
(iii) Income from property.
(iv) Profits and gains of business, profession or vocation.
(v) Income from other sources.
(vi) Capital gains.

7. SALARIES.—(1) The tax shall be payable by an assessee under the head ' Salaries ' in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits in lieu of, or in addition to, any salary or wages, which are due to him from, whether paid or not, or are paid by or on behalf of, the Crown, a local authority, a company, or any other public body or association, or any private employer; and for the purposes of this sub-section advances by way of loan or otherwise of income

chargeable under this head shall be deemed to be salary due on the date when the advance is received :

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties :

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

Provided further that where tax is deductible at the source under Section 18, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction.

Explanation 1.—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

Explanation 2.—A payment due to or received by an assessee from an employer or former employer or from a provident or other fund is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purposes of this sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services :

Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies, or any payment from a recognised provident fund within the meaning of Chapter IXA if such payment is exempted from payment of income-tax under the provisions of Chapter IXA, or any payment from an approved superannuation fund within the meaning of Chapter IXB made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established.

(2) Any income which would be chargeable under this head if paid in the taxable territories shall be deemed to be so chargeable if paid in the State of Jammu and Kashmir by or on behalf of the Central Government or the Government of any State other than the State of Jammu and Kashmir.

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

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without the taxable territories not being interest on a loan issued for public subscription before the 1st day of April, 1938, unless in respect of interest which is so chargeable tax has been paid or deducted under Section

18, or unless there is a person in the taxable territories who may be appointed an agent under Section 43 in respect of such interest :

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

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

9. PROPERTY.—(1) The tax shall be payable by an assessee under the head " Income from property " in respect of the *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 as he may occupy for the purposes of any business, profession or vocation carried on by him the profits of which are assessable to tax, subject to the following allowances, namely :

(*i*) where the prpoperty 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 repair a sum equal to one-sixth of such value;

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

(*iii*) the amount of any annual premium paid to insure the property against risk of damage or destruction ;

(*iv*) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge ; where the property is subject to an annual charge not being a capital charge, the amount of such charge; where the property is subject to a ground rent, the amount of such ground rent; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital :

Provided that no allowance shall be made in respect of any interest or annual charge payable without the taxable territories and chargeable under this Act, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest or a charge on which tax has been paid or from which tax has been deducted under Section 18 or in respect of which there is an agent for the payee in the taxable territories who may be assessed under Section 43 ;

(*v*) any sums paid on account of land revenue in respect of the property ;

(*vi*) in respect of collection charges, a sum not exceeding the prescribed maximum ;

(*vii*) in respect of vacancies, the part of the annual value which is proportional to the period during which the property is wholly unoccupied, or, where the property is let out in parts, that portion of the annual value appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied.

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

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

(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.

(4) For the purposes of this section, the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate.

10. BUSINESS.—(1) The tax shall be payable by an assessee under the head "Profits and gains of business, profession or vocation" in respect of the profit or gains of any business, profession or vocation carried on by him.

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

(*i*) any rent paid for the premises in which such business, profession or vocation is carried on, provided that when any substantial part of the premises is used as 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 annual value of the part so used;

(*ii*) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;

(*iii*) in respect of capital borrowed for the purposes of the business, profession or vocation, the amount of the interest paid :

Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without the taxable territories not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest on which tax has been paid or from which tax has been deducted under Section 18 or in respect of which there is an agent in the taxable territories who may be assessed under Section 43 or, in the case of a firm, for any interest paid to a partner of the firm.

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

(*iv*) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, profession or vocation, the amount of any premium paid;

(v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;

(*vi*) in respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee, a sum equivalent, where the assets are ships other than ships ordinarily plying on inland waters, to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed and where the buildings have been newly erected or the machinery or plant being new has been installed, after the 31st day of March, 1945, a further sum (which shall however not be deductible in determining written down value for the purposes of this clause) in respect of the year of erection or installation equivalent,

(*a*) in the case of buildings the erection of which is begun and completed between the 1st day of April 1946 and the 31st day of March, 1952 (both dates inclusive), to fifteen per cent. of the cost thereof to the assessee;

(b) in the case of other buildings, to ten per cent. of the cost thereof to the assessee;

(*c*) in the case of machinery or plant, to twenty per cent. of the cost thereof to the assessee:

Provided that—

(a) the prescribed particulars have been duly furnished,

(b) where full effect cannot be given to any such allowance in any year not being a year which ended prior to the 1st day of April, 1939, 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, then subject to the provisions of clause (b) of the proviso to sub-section (2) of Section 24, 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 (II of 1886), shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be;

(*via*) in respect of depreciation of buildings newly erected, or of machinery or plant being new which has been installed after the 31st day of March, 1948, a further sum (which shall be deductible in determining the written down value) equal to the amount admissible under clause (vi) (exclusive of the extra allowance for double or multiple shift working of the machinery or plant and the initial depreciation allowance admissible under that clause for the first year of erection of the building or the installation of the machinery or plant) in the assessments for each of the five years commencing on the 1st day of April, 1949, and ending with the 31st day of March, 1954:

Provided that where, in respect of such machinery or plant, the assessee establishes that the market value of similar machinery or plant on the 31st day of March, 1953, is lower than the original cost, then, subject to the provisions of clause (vi), there shall be made in the assessment for the year commencing next after that date a further allowance (which shall be deductible in determining the written down value) of an amount by which the written down value of the machinery or plant as on that date (without deduction of the initial depreciation admissible in the first year) would have exceeded the corresponding written down value thereof as on the same date if the market price of the machinery or plant had been taken as the actual cost to the assessee ;

(*vii*) in respect of any such building, machinery or plant which has been sold or discarded or demolished or destroyed, the amount by which the written down value thereof exceeds the amount for which the buildings, machinery or plant, as the case may be, is actually sold or its scrap value :

Provided that such amount is actually written off in the books of the assessee :

Provided further that where the amount for which any such building, machinery or plant is sold whether during the continuance of the business or after the cessation thereof exceeds the written down value, so much of the excess as does not exceed the difference between the original cost and the written down value shall be deemed to be profits of the previous year in which the sale took place :

Provided further that where any insurance, salvage or compensation moneys are received in respect of any such building, machinery or plant which has been discarded or demolished or destroyed, and the amount of such moneys does not exceed the written down value, the amount allowable under this clause shall be the amount, if any, by which the difference between the written down value and the scrap value exceeds the amount of such moneys :

Provided further that where any insurance, salvage or compensation moneys are received in respect of any such building, machinery or plant as aforesaid, and the amount of such moneys exceeds the difference between the written down value and the scrap value no amount shall be allowable under this clause and so much of the excess as does not exceed the difference between the original cost and the written down value less the scrap value shall be deemed to be profits of the previous year in which such moneys were received :

Provided further that for the purposes of this clause, the original cost of a building, the written down value of which is determined in accordance with the first proviso to sub-section (5), shall be deemed to be the written down value so determined as at the date of its being brought into use for the purposes of the business, profession or vocation;

(*viii*) in respect of animals which have been used for the purposes of the business, profession or vocation 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;

(*ix*) 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, profession or vocation;

(*x*) 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, profession or vocation for the year in question; and

(*c*) the general practice in similar businesses, professions or vocations;

(*xi*) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year;

(*xii*) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business;

(*xiii*) any sum paid to a scientific research association having as its objects the undertaking of scientific research related to the class of business carried on, and any sum paid to a university, college or other institution to be used for such scientific research :

Provided that such association, university, college or institution is for the time being approved for the purposes of this clause by the prescribed authority;

(*xiv*) in respect of any expenditure of a capital nature on scientific research related to the business, an allowance for each of the five consecutive previous years beginning with the year in which the expenditure was incurred, or where the expenditure was incurred prior to the commencement of the business, for each of the five consecutive previous years beginning with the year in which the business was commenced, equal to one-fifth of such expenditure.

Provided that no allowance shall be made for any expenditure incurred more than three years before the commencement of the business :

Provided further that—

(*a*) where an asset representing scientific research expenditure of a capital nature ceases to be used for scientific research related to such business—

(*i*) no allowance shall be made in respect of any previous year after the previous year in which the cessation takes place and

(*ii*) if the aggregate of the amounts allowed under this clause added to the value of the asset immediately before the cessation is less than the said expenditure, there shall also be allowed in respect of the previous year in which the cessation takes place an additional deduction equal to the difference;

(*b*) where such asset is sold without having been used for other purposes, the sale proceeds shall be taken to be the value of the asset immediately before the cessation, and if an additional allowance or a greater additional allowance would have been made in respect of the previous year in which the cessation occured on the basis of that value, an amount equal to the additional allowance which would have been made or, as the case may be, to the difference between the additional allowance which would have been made and the additional allowance which was made for that year shall be made in respect of the previous year in which the sale occurs;

(c) where the proceeds of the sale plus the total amount of the allowances made under this clause exceed the amount of the expenditure, the excess or the amount of the allowances so made, whichever is the less, shall be treated as a receipt of the business accruing at the time of the sale;

(*d*) where a deduction is allowed for any previous year under this clause in respect of expenditure represented wholly or partly by any asset, no deduction shall be allowed under clause (vi) or clause (vii) for the same previous year in respect of that asset;

(*e*) where an asset is used in the business after it ceases to be used for scientific research related to that business, and a claim for an allowance under clause (vi) or clause (vii) is made in respect of that asset, the actual cost to the assessee of the asset shall be treated as reduced by the amount of any deductions allowed under this clause ;

(*f*) clause (b) of the proviso to clause (vi) shall apply in relation to deductions allowable under this clause as it applies in relation to deductions allowable in respect of depreciation ;

(*g*) if any question arises under clause (xii), clause (xiii) or this clause as to whether, and if so to what extent, any activity constitutes or constituted or any asset is or was being used for, scientific research, the Central Board of Revenue shall refer the question to the prescribed authority, whose decision shall be final ;

Explanation.—In clause (xii), clause (xiii) and this clause—

(*i*) " scientific research " means any activities in the fields of natural or applied science for the extension of knowledge ;

(*ii*) references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in,

or arising out of, scientific research, but, save as aforesaid, include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research;

(*iii*) references to scientific research related to a business or class of business include—

(*a*) any scientific research which may lead to or facilitate an extension of that business, or as the case may be, all businesses of that class ;

(*b*) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, businesses of that class ;

(*xv*) any expenditure not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, profession or vocation.

(3) Where any building, machinery plant or furniture in respect of which any allowance is due under clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

(4) Nothing in clause (ix) or clause (xv) of sub-section (2) 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, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains; and nothing in clause (xv) of sub-section (2) shall be deemed to authorise—

(*a*) any allowance in respect of a payment which is chargeable under the head " Salaries " if it is payable without the taxable territories and tax has not been paid thereon nor deducted therefrom under Section 18, or

(*b*) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm; or

(*c*) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head " Salaries ".

(5) In sub-section (2), '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; 'plant' includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation; and 'written down value' means—

(*a*) in the case of assets acquired in the previous year, the actual cost to the assessee;

Provided that where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business and the Income-tax Officer is satisfied that the main purpose of the

transfer of such assets, directly or indirectly to the assessee, was a reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee shall be such an amount as the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, determine having regard to all the circumstances of the case ;

(*b*) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act, or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886 (II of 1886), was in force :

Provided that in the case of a building previously the property of the assessee and brought into use for the purposes of the business, profession or vocation after the 28th day of February, 1946, 'written down value' means the actual cost to the assessee reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee and had the provisions of this Act relating to the allowance for depreciation been in force on and from the date of acquisition :

Provided further that where the provisions of the proviso to sub-section (2) of Section 26 are applicable, the actual cost to the assessee referred to in clauses (a) and (b) shall be the actual cost to the person succeeded in the business, profession or vocation.

(6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

(7) Notwithstanding anything to the contrary contained in Sections 8, 9, 10, 12 or 18, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act.

11. PROFESSIONAL EARNINGS.—*Omitted by Section 12 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939).*

12. OTHER SOURCES.—(1) The tax shall be payable by an assessee under the head " Income from other sources " in respect of income, profits and gains of every kind which may be included in his total income (if not included under any of the preceding heads).

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

(*a*) any personal expenses of the assessee, or

(*b*) any interest chargeable under this Act which is payable without the taxable territories not being interest on a loan issued for public subscription before the 1st day of April, 1938, or not being interest on which tax has been paid or from which tax has been deducted under Section 18, or

(*c*) any payment which is chargeable under the head, "Salaries", if it is payable without the taxable territories and tax has not been paid thereon nor deducted therefrom under Section 18.

(3) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of sub-section (2) of Section 10.

(4) Where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of sub-section (2) of Section 10 in respect of such buildings.

12A. MANAGING AGENCY COMMISSION.—Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

12B. CAPITAL GAINS.—(1) The tax shall be payable by an assessee under the head "Capital gains" in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of March, 1946 and before the 1st day of April 1948; and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or transfer took place :

Provided that where the amount of capital gains in the previous year does not exceed fifteen thousand rupees, the tax shall not be payable by the assessee and such amount shall not be included in his total income :

Provided further that the tax shall not be payable by an assessee in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset, being property the income of which is chargeable under Section 9 and which has been possessed by the assessee or a parent of his for not less than seven years before the date on which the sale, exchange or transfer took place; and the amount of such profits or gains shall not be included in his total income :

Provided further that any transfer of capital assets by reason of the compulsory acquisition thereof under any law for the time being in force relating to the compulsory acquisition of property for public purposes or any distribution of capital assets on the total or partial partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons, or on the liquidation of a company, or under a deed of gift, bequest, will or transfer on irrevocable trust shall not, for the purposes of this section, be treated as sale, exchange or transfer of the capital assets :

Provided further that the transfer of a capital asset by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange or transfer within the meaning of this section where the subsidiary company is resident in the taxable territories and is registered under the Indian Companies Act, 1913, so however that for the purposes of clause (vi) or clause (vii) of sub-section (2) of Section 10, the cost or the written down value, as the

case may be, of the transferred capital asset shall be taken to be the same as it would have been if parent company had continued to hold the capital asset for the purposes of its business.

(2) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made, namely:—

(i) expenditure incurred solely in connection with such sale, exchange or transfer;

(ii) the actual cost to the assessee of the capital asset, including any expenditure of a capital nature incurred and borne by him in making any additions or alterations thereto, but excluding any expenditure in respect of which any allowance is admissible under any provision of Sections 8, 9, 10 and 12:

Provided that where a person who acquires a capital asset from the assessee, whether by sale, exchange or transfer, is a person with whom the assessee is directly or indirectly connected, and the Income-tax Officer has reason to believe that the sale, exchange or transfer was effected with the object of avoidance or reduction of the liability of the assessee under this section, the full value of the consideration for which the sale, exchange or transfer is made shall, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, be taken to be the fair market value of the capital asset on the date on which the sale, exchange or transfer took place :

Provided further that where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its written down value, as defined in Section 10, increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of that section:

Provided further that where the capital asset became the property of the assessee or of the previous owner where the cost of the capital asset to the previous owner is to be taken in accordance with sub-section (3) before the 1st day of January, 1939, he may on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount of depreciation, if any, allowed to the assessee after the said date and increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of Section 10:

Provided further that where the capital asset was on any previous occasion the subject of negotiations for its sale, exchange or transfer, any option or other money received and retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost to him of such asset.

(3) Where any capital asset became the property of the assessee by succession, inheritance or devolution or under any of the circumstances referred to in the third proviso to sub-section (1), its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capiptal asset became the property of the previous owner shall be deemed to be the actual cost thereof.

Provided that where the capital asset became the property of the assessee—

(i) before the 1st day of April, 1947, under a deed of gift or on the partition of a Hindu undivided family, the actual cost allowable to him shall be the fair market value of the capital asset on the date of the gift or the date of the partition, as the case may be, if such value is greater than the actual cost to the previous owner or the fair market value thereof on the 1st day of January, 1939, where the third proviso to sub-section (2) applies;

(ii) on or after the 1st day of April, 1947, on the partition of a Hindu undivided family, the cost allowable to him shall be the fair market value on the date of the partition.

(4) Notwithstanding anything contained in sub-section (1), where a capital gain arises from the sale, exchange or transfer of a capital asset which immediately before the date on which the sale, exchange or transfer took place was being used by the assessee for the purposes of his business, profession or vocation, or which in the two years immediately preceding that date was being used by him or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased a new capital asset for the same purposes of his business, profession or vocation or, as the case may be, for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange or transfer took place, it shall, if the assessee so elects in writing before the assessment is made be dealt with in accordance with following provisions of this sub-section, that is to say,—

(*a*) if the amount of the capital gain is greater than the cost of the new asset,—

(i) the difference between the amount of the capital gain and the cost of the new asset shall be charged under this section as income of the previous year, and

(ii) for the purposes of computing in respect of the new asset any allowance under clause (vi) or clause (vii) of sub-section (2) of Section 10 or the amount of any capital gain arising from its sale, exchange or transfer, the cost or the written down value, as the case may be, shall be nil, or

(*b*) if the amount of the capital gain is equal to or less than the cost of the new asset,—

(i) the capital gain shall not be charged under this section, and

(ii) for the purposes of computing in respect of the new asset any allowance under the said clause (vi) or any allowance or adjustment under the said clause (vii) or the amount of any capital gain arising from its sale, exchange or transfer the cost or the written down value, as the case may be, shall be reduced by the amount of the capital gain:

Provided that where in respect of the purchase of a new capital asset consisting of plant or machinery the assessee satisfies the Income-tax Officer that despite the exercise of the diligence it has not been possible to make the purchase within the period specified in this sub-section, the Income-tax

Officer may, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, extend the said period to such date as he considers reasonable.

13. METHOD OF ACCOUNTING.—Income, profits and gains shall be computed, for the purposes of Sections 10 and 12, in accordance with the method of accounting regularly employed by the assessee:

Provided that, if no method of accounting has been regularly employed, or 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.

14. EXEMPTIONS OF A GENERAL NATURE.—(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, where such sum has been paid out of the income of the family or in the case of an impartible estate where such sum has been paid out of the income of the holder of the estate belonging to the family.

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

(*a*) if a partner of an unregistered firm, in respect of any portion of his share in the profits and gains of the firm computed in the manner laid down in clause (*b*) of sub-section (1) of Section 16 on which the tax has already been paid by the firm; or

(*b*) if a member of an association of persons other than a Hindu undivided family, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association; or

(*c*) in respect of any income, profits or gains accruing or arising to him within a Part B State unless such income, profits or gains are received or deemed to be received in or are brought into the taxable territories in the previous year by or on behalf of the assessee, or are assessable under Section 12B or 42.

15. EXEMPTION IN THE CASE OF LIFE INSURANCES.—(1) The tax shall not be payable in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee, or as a contribution to any Provident Fund to which the Provident Funds Act, 1925 (XIX of 1925), applies.

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

(2A) Nothing in sub-section (1) or sub-section (2) shall apply to so much of any premium or other payment made on a policy other than a contract for a deferred annuity as is in excess of ten per cent. of the actual capital sum assured; and in calculating any such capital sum no account shall be taken of the value of any premiums agreed to be returned or of any benefit by way of bonus or otherwise which is to be or may be received either before or after death either by the person paying the premium or by any other person and which is not the sum actually assured.

(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the second proviso to sub-section (1) of section 7 and any sums exempted under sub-section (1) of section 58F, exceed in the case of an individual, one-sixth of the total income of the assessee, or six thousand rupees, whichever is less, and in the case of a Hindu undivided family, one-sixth of the total income of the assessee, or twelve thousand rupees, whichever is less.

15A. EXEMPTION OF PORTION OF EARNED INCOME.—The tax shall not be payable by an assessee in respect of such portion, if any, of the earned income included in his total income as is directed by the annual Central Act fixing the rate or rates of tax for any year to be deducted in making an assessment for that year, and for the purposes of determining the rates at which income-tax (but not super-tax) is payable by the assessee for that year his total income shall be deemed to be the total income reduced by the said portion.

15B. EXEMPTION ON ACCOUNT OF DONATION FOR CHARITABLE PURPOSES.—(1) The Tax shall not be payable by an assessee in respect of any sums paid by him on or after the 1st day of April, 1948 as donations to any Institution or Fund which is established in the taxable territories for a charitable purpose and is approved by the Central Government for the purpose of this section :

Provided that the total of the sums so paid is not less than Rs. two hundred and fifty rupees :

Provided further that in the case of a company this exemption shall apply only in respect of the income-tax and not in respect of any super-tax, payable by it.

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

(2) The aggregate of any sums exempted under this section shall not be exceed—

(*a*) One-twentieth in the case of a company, and one-tenth in any other case, of the assessee's total income as reduced by any portion thereof exempt from tax under any other provision of this Act, or

(*b*) two hundred and fifty thousand rupees, whichever is less :

Provided that where any sum paid during the previous year as donation to the fund known as the Gandhi National Memorial Fund is in excess of the limits specified in this section, the exemption granted under this section shall apply to the whole of that sum.

(3) The amount by which the tax payable by an assessee is reduced on account of an exemption under this section shall not in any case exceed half the amount in respect of which the exemption is allowed under this section.

15C. EXEMPTION FROM TAX OF NEWLY ESTABLISHED INDUSTRIAL UNDERTAKINGS.—(1) Save as otherwise hereinafter provided, the tax shall not be payable by an assessee on so much of the profits or gains derived from any industrial undertaking to which this section applies as do not exceed six per cent. per annum on the capital employed in the undertaking, computed in accordance with such rule as may be made in this behalf by the Central Board of Revenue.

(2) This section applies to any industrial undertaking which—

(*i*) is not formed by the splitting up, or the reconstruction of, business already in existence or by the transfer to a new business of building, machinery or plant used in a business which was being carried on before the 1st day of April, 1948 ;

(*ii*) has begun or begins to manufacture or produce articles in any part of the taxable territories at any time within a period of three years from the 1st day of April, 1948, or such further period as the Central Government may, by notification in the official Gazette, specify with reference to any particular industrial undertaking ;

(*iii*) employs more than fifty persons; and

(*iv*) involves the use of electrical energy or any other form of energy which is mechanically transmitted and is not directly generated by human agency :

Provided that the Central Government may, by notification in the official Gazette, direct that the exemption conferred by this section shall not apply to any particular industrial undertaking.

(3) The profits or gains of an industrial undertaking to which this section applies shall be computed in accordance with the provisions of Section 10.

(4) The tax shall not be payable by a shareholder in respect of so much of any dividend paid or deemed to be paid to him by an industrial undertaking as is attributable to that part of the profits or gains on which the tax is not payable under this section.

(5) Nothing in this section shall affect the application of Section 23A in relation to the profits or gains of an industrial undertaking to which this section applies, and for the purposes of that section, the expression 'assessable income' shall be deemed to include the profits or gains in respect of which the tax is not payable under this section.

(6) The provisions of this section shall apply to the assessments for the years commencing on the 1st day of April, 1949, and ending on the 31st day of March, 1954.

16. EXEMPTIONS AND EXCLUSIONS IN DETERMINING THE TOTAL INCOME.—(1) In computing the total income of an assessee—

(*a*) any sums exempted under the second proviso to sub-section (1) of Section 7, the second and third provisos to Section 8, sub-section (2) of Section 14, Section 15, Section 15B and Section 15C shall be included; and any sum exempted under Section 15A shall also be included except for the purpose of determining the rates at which income-tax (but not super-tax) is payable by the assessee to whom the exemption is given ;

(*b*) when the assessee is a partner of a firm, then whether the firm has made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year :

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of Section 24 ;

(*c*) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939) from assets remaining the property of the settler or disponer, shall be deemed to be income of the settler or disponer, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor :

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the transfer directly or indirectly of the income or assets to the settler, disponer transferor, or in any way gives the settler, disponer or transferor, a right to reassume power directly or indirectly over the income or assets :

Provided further that the expression ' settlement or disposition ' shall for the purposes of this clause include any disposition, trust covenant, agreement, or arrangement, and the expression ' settler or disponer ' in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made :

Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the settler or disponer derives no direct benefit but that the settler shall be liable to be assessed on the said income as and when the power to revoke arises to him.

(2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased to such amount as would if income-tax (but not super-tax) at the rate applicable to the total income of the company (without taking into account any rebate allowed or additional income-tax charged) for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed, were deducted therefrom, be equal to the amount of the dividend :

Provided that when any portion of the profits and gains of a company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the increase to be made under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company.

(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 otherwise than for adequate consideration ; and

(*b*) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both.

17. DETERMINATION OF TAX PAYABLE IN CERTAIN SPECIAL CASES.—(1) Where a person is not resident in the taxable territories and is a Citizen of India or a British subject as defined in Section 1 of the British Nationality Act, 1948, the tax, including super-tax payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income, and in the case of any other non-resident person, the income-tax payable by him or on his behalf on his total income shall be at the maximum rate and the super-tax payable thereon shall be an amount bearing to the total amount of super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income.

(2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the income-tax excluding super-tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super-tax which would have been payable on the total income had no part of it been exempted the same proportion as the unexempted portion of the total income bears to the total income.

(3) Where there is included in the total income of any assessee any income exempted from tax under clause (c) of sub-section (2) of Section 14 or under Section 15B or under Section 15C the super-tax payable by the assessee shall be an amount bearing to the total amount of the super-tax which would have been payable on the total income had no part of it been so exempted the same proportion as the total income less the portion so exempted bears to the total income.

(4) Where any income exempted from tax under clause (c) of sub-section (2) of Section 14 which has been taken into account under sub-section (2) or sub-section (3) of this section as part of the total income of an assessee for the purpose of determining the income-tax or super-tax payable by him is in a subsequent year brought into or received in the taxable territories by the assessee and becomes chargeable with tax accordingly, the tax including super-tax payable by the assessee on his total income of that subsequent year shall be—

(*a*) the amount which bears to the total amount of the tax including super-tax which would have been payable on his total income as reduced by the amount of the income so brought into or received in the taxable territories had such reduced income been his total income the same proportion as his total income bears to such reduced income, or

(*b*) the amount which bears to the total amount of the tax including super-tax which would have been payable on the amount of the

income so brought into or received in the taxable territories had such income been his total income the same proportion as his total income bears to the amount of the income so brought into or received in the taxable territories,

whichever is the greater

(5) Where the amount of the total income of any assessee is deemed to be the total income reduced under the provisions of Section 15A by an allowance for earned income, the expression 'total income' in this section shall, for the purpose of determining the amount of income-tax (but not super-tax) payable by the assessee, be deemed to refer to his total income so reduced.

(6) Where the total income of an assessee, not being a company, includes any income chargeable under the head "Capital Gains", the tax, including super-tax, payable by him on his total income shall be—

(*i*) income-tax and super-tax payable on his total income as reduced by the amount of such inclusion, had such reduced income been his total income, plus

(*ii*) income-tax on the whole amount of such inclusion at the following rates, namely :—

Where such amount—						Rate
exceeds Rs.	15,000	but does not exceed Rs.		50,000	-/1/-	in the Re.
,, Rs.	50,000	,,	,, Rs.	2,00,000	-/2/-	,, ,,
,, Rs	2,00,000	,,	,, Rs.	5,00,000	-/3/-	,, ,,
,, Rs.	5,00,000	,,	,, Rs.	10,00,000	-/4/-	,, ,,
,, Rs.	10,00,000				-/5/-	,, ,,

Provided that where owing to the fact that the amount of such inclusion has exceeded a certain limit, income-tax thereon is payable or is payable at a higher rate, the amount of income-tax so payable shall be reduced so as not to exceed—

(a) the amount which would have been payable if the amount of such inclusion had not exceeded that limit, plus

(b) one-half of the amount by which the amount of such inclusion exceeds that limit.

(7) Where the total income of a company includes any income chargeable under the head "Capital Gains", the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusion at the rate of super-tax (excluding the rate of additional super-tax, if any) specified in the case of a company by the annual Act of the Central Legislature fixing the rate or rates of tax for that year.

CHAPTER IV

Deductions and Assessment.

18. PAYMENT BY DEDUCTION AT SOURCE.—(*1*) *Repealed by the Income-tax (Second Amendment) Act of 1933.*

(2) Any person responsible for paying any income chargeable under the head " Salaries " shall, at the time of payment, deduct income-tax and super-tax on the amount payable at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head :

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

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

(2B) Any person responsible for paying any income chargeable under the head " Salaries " to a person not resident in the taxable territories shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head.

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

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income or the total world 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 referred to in this sub-section or in sub-section (2B), as the case may be, 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) Any person responsible for paying to a person not resident in the taxable territories any interest not being ' Interest on Securities ' or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate :

Provided that where the person so payable is a citizen of India or a British subject as defined in Section 1 of the British Nationality Act, 1948, and 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 world income of such person will be less than the minimum liable to income-tax or that his total income will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section 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 :

Provided further that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which the person responsible for making the payment is deemed under the first proviso to Section 43 not to be an agent of the payee.

(3B) Where the Income-tax Officer has reason to believe that the total world income of any person residing out of the taxable territories to whom any interest not being " Interest on Securities " or any other sum chargeable under this Act 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 making such payments to such person to deduct at the time of payment super-tax at the rates determined by the Income-tax Officer to be applicable to the total world income of such person in that year.

(3C) Where the person responsible for paying any interest not being " Interest on Securities " or any other sum chargeable under this Act to any person makes to that person in any year payments 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 making such payments, shall, if he has not reason to believe that the recipient is resident in the taxable territories and no order under subsection (3B) has been received in respect of such recipient, deduct at the time of payment super-tax on the amount by which the total amount of such payments exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

(3D) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of the taxable territories and that the total world 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.

(3E) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by an Indian Company or by a Company which has made such effective arrangements as may be prescribed for the deduction of super-tax from such dividends (increased in accordance with the provisions of sub-section (2) of Section 16) 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 no reason to believe that the share-holder is resident in the taxable territories and no order under sub-section (3D) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the

law for the time being in force if the amount of such dividend or dividends (increased as aforesaid) constituted the whole total income of the shareholder.

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

(5) Any deduction made in accordance with the provisions of this section and any sum by which a dividend has been increased under sub-section (2) of Section 16 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 or of the shareholder, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act :

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

Provided further that where such person or owner is a person whose income is included under the provisions of clause (c) of sub-section (1) or sub-section (3) of Section 16, Section 44D or Section 44E in the total income of another person such other person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.

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

(7) If any such person does not deduct or after deducting fails to pay the tax as required by or under this section, he, and in the cases specified in sub-sections (3D) and (3E) the company of which he is the principal officer shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax :

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

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

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

18A. ADVANCE PAYMENT OF TAX.—(1) (a) In the case of income in respect of which provision is not made under Section 18 for deduction of income-tax at the time of payment, the Income-tax Officer may, on or after the 1st day of April in any financial year, by order in writing, require an assessee to pay quarterly to the credit of the Central Government on the 15th day of June, 15th day of September, 15th day of December and 15th day of March in that year, respectively, an amount equal to one quarter of the

income-tax and super-tax payable on so much of such income as is included in his total income of the latest previous year in respect of which he has been assessed, if that total income exceeded six thousand rupees. Such income-tax and super-tax shall be calculated at the rates in force for the financial year in which he is required to pay the tax, and shall bear to the total amount of income-tax and super-tax so calculated on the said total income the same proportion as the amount of such inclusions bears to his total income or, in cases where under the provisions of sub-section (1) of Section 17 both income-tax and super-tax or super-tax are chargeable with reference to the total world income, shall bear to the total amount of income-tax and super-tax which would have been payable on his total world income of the said previous year had it been his total income the same proportion as the amount of such inclusions bears to his total world income :

Provided that, where the previous year of the assessee in respect of any source of income ends after the 31st day of December and before the 30th day of April, the order in writing issued by the Income-tax Officer requiring the payment of income-tax and super-tax on that source of income shall substitute for the four quarterly payments hereinbefore specified, three payments of equal amount to be made on the 15th day of September, the 15th day of December and the 15th day of March, respectively :

Provided further that, if the assessee is a partner of a registered firm and an assessment of the firm has been completed for a previous year later than that for which the assessee's last assessment has been completed, his share in the profit of the firm shall, for the purposes of this sub-section, be included in his total income on the basis of the latest assessment of the firm :

Provided further that, if after the making of an order by the Income-tax Officer, and before the 15th day of February of the financial year an assessment of the assessee or of the registered firm of which he is a partner is completed in respect of a previous year later than that referred to in the order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one instalment on the specified date, or in equal instalments on the specified dates if more than one, falling after the date of the amended order, the tax computed on the revised basis as reduced by the amount, if any, paid in accordance with the original order; but if the amount already paid exceeds the tax determined on the revised basis, the excess shall be refunded.

(b) If the notice of demand issued under Section 29 in pursuance of the order under clause (a) of this sub-section is served after any of the dates on which the instalments specified therein are payable, the tax shall be payable in equal instalments on each of such of those dates as fall after the date of the service of the notice of demand, or in one sum on the 15th day of March if the notice is served after the 15th day of December.

(2) If any assessee who is required to pay tax by an order under sub-section (1) estimates at any time before the last instalment is due that the part of his income to which that sub-section applies for the period which would be the previous year for an assessment for the year next following is less than the income on which he is required to pay tax and accordingly wishes to pay an amount less than the amount which he is so required to pay, he may send to the Income-tax Officer an estimate of the tax payable by him calculated in the manner laid down in sub-section (1) on that part of his income for such period, and shall pay such amount as accords with

his estimate in equal instalments on such of the dates specified in sub-section (1)(a) as have expired or in one sum if only the last of such dates has not expired :

Provided that the assessee may send a revised estimate of the tax payable by him before any one of the dates specified in sub-section (1)(a) and adjust any excess or deficiency in respect of any instalment already paid in a subsequent instalment or in subsequent instalments.

(3) Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following is likely to exceed six thousand rupees, send to the Income-tax Officer an estimate of the tax payable by him on that part of his income to which provisions of Section 18 do not apply of the said previous year calculated in the manner laid down in sub-section (1), and shall pay the amount, on such of the dates specified in the sub-section as have not expired, by instalments which may be revised according to the proviso to sub-section (2).

(4) Where part of the income to which sub-section (1), (2) or (3) applies consists of any income of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's account before any of the quarterly instalments of tax become due, he may defer payment of tax on that part of his income to the date on which such income would be normally received or adjusted and if he does so he shall communicate to the Income-tax Officer the date to which such payment is deferred :

Provided that, if the tax of which the payment is deferred is not paid within fifteen days of the date on which such income or part thereof is received or adjusted by the payer in the assessee's account, the tax shall be payable with six per cent. simple interest per annum from the date of such receipt or adjustment to the date of payment of the tax.

(5) The Central Government shall pay on any amount paid under this section simple interest at two per cent. per annum from the date of payment to the date of the provisional assessment made under Section 23B or if no such assessment has been made, to the date of the assessment (hereinafter called the 'regular assessment') made under Section 23 of the income, profits and gains of the previous year for an assessment for the year next following the year in which the amount was payable :

Provided that on any portion of such amount which is refunded under the foregoing provisions of this section interest shall be payable only up to the date on which the refund was made.

(6) Where in any year an assessee has paid tax under sub-section (2) or sub-section (3) on the basis of his own estimate, and the tax so paid is less than eighty per cent. of the tax determined on the basis of the regular assessment, so far as such tax relates to income to which the provisions of Section 18 do not apply and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made, simple interest at the rate of six per cent. per annum from the first day of January in the financial year in which the tax was paid up to the date of the said regular assessment shall be payable by the assessee upon the amount by which the tax so paid falls short of the said eighty per cent :

Provided that where a provisional assessment is made under Section 23B, interest shall be calculated in accordance with the foregoing provision

up to the date on which the tax as provisionally assessed is paid, and thereafter interest shall be calculated at the rate of aforesaid on the amount by which the tax as so assessed (in so far as it relates to income to which the provisions of Section 18 do not apply) falls short of the said eighty per cent :

Provided also that, where, as a result of an appeal under Section 31 or Section 33 or of a revision under Section 33A or of a reference to the High Court under Section 66, the amount on which interest was payable under this sub-section has been reduced the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded together with the amount of income-tax that is refundable :

Provided further that, where a business, profession or vocation is newly set up and is assessable on the income, profits and gains of its first previous year in the financial year following that in which it is set up, the interest payable shall be computed from the 1st day of April of the said financial year.

(7) Where, on making the regular assessment, the Income-tax Officer finds that any assessee has—

(*a*) under sub-section (2) or sub-section (3) underestimated the tax payable by him and thereby reduced the amount payable in any of the first three instalments, or

(*b*) under sub-section (4) wrongly deferred the payment of tax on a part of his income,

he may direct that the assessee shall pay simple interest at six per cent. per annum, in the case referred to in clause (a) for the period during which the payment was deficient on the difference between the amount paid in each such instalment and the amount which should have been paid having regard to the aggregate tax actually paid under this section during the year, and the case referred to in clause (b) for the period during which the payment of tax was wrongly deferred on the amount of which the payment was so deferred :

Provided that for the purposes of this sub-section any instalment due before the expiry of six months from the commencement of the previous year in respect of which it is to be paid shall be deemed to have become due fifteen days after the expiry of the said six months.

(8) Where, on making the regular assessment, the Income-tax Officer finds that no payment of tax has been made in accordance with the fore-going provisions of this section, interest calculated in the manner laid down in sub-section (6) shall be added to the tax as determined on the basis of the regular assessment.

(9) If the Income-tax Officer, in the course of any proceedings in connection with the regular assessment, is satisfied that any assessee—

(*a*) has furnished under sub-section (2) or sub-section (3) estimates of the tax payable by him which he knew or had reason to believe to be untrue, or

(*b*) has without reasonable cause failed to comply with the provisions of sub-section (3),

the assessee shall be deemed, in the case referred to in clause (a), to have deliberately furnished inaccurate particulars of his income, and in the case referred to in clause (b), to have failed to furnish the return of his total income; and the provision of Section 28, so far as may be, shall apply accordingly :

Provided that the amount of penalty leviable shall, in the case referred to in clause (a), be a sum not exceeding one-and-a-half times the amount by which the tax actually paid during the year under the provisions of this section falls short of the tax that should have been paid by the assessee under sub-section (1) or eighty per cent. of the tax determined on the basis of the regular assessment as modified in the manner provided in sub-section (6), whichever is the less, and in the case referred to in clause (b), one-and-a-half times the said eighty per cent.

(10) (*a*) If any assessee does not pay on the specified dates any instalment of tax that he is required to pay under sub-section (1) and does not, before the date on which any such instalment as is not paid becomes due, send under sub-section (2) an estimate or a revised estimate of the tax payable by him, he shall be deemed to be an assessee in default in respect of such instalment or instalments.

(*b*) If any assessee has sent under sub-section (2) or sub-section (3) an estimate or a revised estimate of the tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in sub-section (1), he shall be deemed to be an assessee in default in respect of such instalment or instalments :

Provided that the assessee shall not, under clause (a) or (b), be deemed to be in default in respect of any amount of which the payment is deferred under sub-section (4) until after the date communicated by him to the Income-tax Officer under that sub-section.

(11) Any sum other than a penalty or interest paid by or recovered from an assessee in pursuance of the provisions of this section shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the financial year next following the year in which it was payable, and credit therefor shall be given to the assessee in the regular assessment.

(12) Any income chargeable under the head " Capital gains " shall not be taken into account for any of the purposes of this section.

19. PAYMENTS IN OTHER CASES.—In the case of income in respect of which provision is not made under Section 18 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of Section 18, income-tax shall be payable by the assessee direct.

19A. SUPPLY OF INFORMATION REGARDING DIVIDENDS.—The prpincipal officer of every company which is an Indian Company or a Company which has made such effective arrangements as may be prescribed for the declaration and payment of dividends in the taxable territories 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 compapny, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.

20. CERTIFICATE BY COMPANY TO SHAREHOLDERS RECEIVING DIVIDENDS.—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.

20A. SUPPLY OF INFORMATION REGARDING INTEREST.—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 four hundred rupees as may be prescribed in this behalf, together with the amount paid to each such person.

21. ANNUAL RETURN.—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 employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form and verified in the prescribed manner 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 or to whom was due 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 or so due by each such person, and the time or times at which the same was paid or due, as the case may be ;

(*c*) the amount deducted in respect of income-tax and super-tax from the income of each such person.

22. RETURN OF INCOME.—(1) The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty 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 required by the notice) his total income and total world income during that 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 person or class of persons.

(2) In the case of any person 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 may 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 and total world income during the previous year:

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return.

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

(4) The Income-tax Officer may serve on any person who has made a return under sub-section (1) or 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.

(5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof.

23. ASSESSMENT.—(1) If the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under Section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under Section 22 is correct and complete, he shall serve on such person, a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

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

(4) If any person fails to make the return required by any notice given under sub-section (2) of Section 22 and has not made a return or a revised return under sub-section (3) of the same section 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 judgemnt and determine the sum payable by the assessee on the basis of such assessment and, in the case of a firm, may refuse to register it or may cancel its registration if it is already registered :

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.

(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4), as the case may be,—

(a) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be determined:

Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of Section 24:

Provided further that when any of such partners is a person not resident in the taxable territories, his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm :

Provided also that if at the time of assessment of any partner of a registered firm, the Income-tax Officer is of opinion that the partner is residing in Pakistan, the partner's share of the income, profits and gains of the firm shall be assessed on the firm in the manner laid down in the preceding proviso and the sum so determined as payable shall be paid by the firm; and

(b) in the case of an unregistered firm, the Income-tax Officer may instead of determining, the sum payable by the firm itself proceed in the manner laid down in clause (a) as applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm.

(6) Whenever the Income-tax Officer makes a determination in accordance with the provisions of sub-section (5), he shall notify to the firm by an order in writing the amount of the total income on which the determination has been based and the apportionment thereof between the several partners.

23A. POWER TO ASSESS INDIVIDUAL MEMBERS OF CERTAIN COMPANIES.—(1) Where the Income-tax officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting are less than sixty per cent. of the assessable income of the company of that previous year, as reduced by the amount of income-tax and super-tax payable by the company in respect thereof he shall, unless he is satisfied that having regard to losses incurred by the Company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make with the previous approval of the Inspecting Assistant Commissioner an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes and reduced by the amount of income-tax and super-tax payable by the company in respect thereof shall be deemed to have

been distributed as dividends amongst the shareholders as at the date of the general meeting aforesaid, and thereupon the proportionate shares thereof of each shareholder shall be included in the total income of such shareholder for the purpose of assessing his total income:

Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply, as if instead of the words 'sixty per cent.' the words 'one hundred per cent.' were substituted :

Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent. of the assessable income of the company as reduced by the amount of income-tax and super-tax payable by the company in respect thereof, unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made is not less than sixty per cent. of the assessable income of the company of the previous year concerned as reduced by the amount of income-tax and super-ptax payable by the company in respect thereof :

Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

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

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 alloted 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 years been the subject of dealings in any stock exchange in the taxable territories or are in fact freely transferable by the holders to other members of the public.

(2) The Inspecting 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 compapny concerned an opportunity of being heard.

(3) (*i*) *omitted*

(*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 provision of sub-section (1) the tax payable, in respect thereof shall be recoverable from the company, if it cannot be recovered from such member.

(*iii*) Where tax is recoverable from a company 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 shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI.

(4) 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.

(5) When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company.

23B. POWER TO MAKE PROVISIONAL ASSESSMENT IN ADVANCE OF REGULAR ASSESSMENT.—(1) The Income-tax Officer may, at any time after the receipt of a return made under Section 22, proceed to make in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it, after giving due effect to (i) the allowance referred to in paragraph (b) of the proviso to clause (vi) of sub-section (2) of Section 10, and (ii) any loss carried forward under sub-section (2) of Section 24.

(2) A partner of a firm may be provisionally assessed under sub-section (1) in respect of his share in the firm's income, profits and gains, if its return has been received, although the return of the partner himself may not have been received.

(3) A firm may be provisionally assessed under sub-section (1) as if it were an unregistered firm, unless the firm fulfils such conditions as the Central Government may, by notification in the official Gazette, specify in that behalf.

(4) There shall be no right of appeal against a provisional assessment made under sub-section (1).

(5) For the avoidance of doubt, it is hereby declared that the provisions of Section 45 (except the first proviso) and Section 46 apply in relation to any tax payable in pursuance of a provisional assessment made under sub-section (1) as if it were a regular assessment made under Section 23.

(6) Income-tax paid or deemed to have been paid under Section 18 or Section 18A in respect of any income provisionally assessed under sub-section (1), shall be deemed to have been paid towards the provisional assessment.

(7) After a regular assessment has been made under Section 23, any amount paid or deemed to have been paid towards a provisional assessment made under sub-section (1), shall be deemed to have been paid towards the regular assessment, and where the amount paid or deemed to have been paid towards the provisional assessment, exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

(8) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination on the merits, of any issue which may arise in the course of the regular assessment under Section 23.

24. SET-OFF OF LOSS IN COMPUTING AGGREGATE INCOME.—(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 :

Provided that where the loss sustained is a loss of profits or gains which would but for the loss have accured or arisen within India, but outside the taxable territories and would, under the provisions of clause (c) of sub-section (2) of Section 14, have been exempt from tax, such loss shall not be set off except against profits or gains accruing or arising within India but outside the taxable territories and exempt from tax under the said provisions :

Provided further that where the assessee is an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of Section 23 in the manner applicable to a registered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and they alone shall be entitled to have the amount of the loss set off under this section.

(2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the 31st day of March, 1940, under the head " Profits and gains of business, profession or vocation ", and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on; but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the year ending on the 31st day of March, 1940, the 31st day of March, 1941 the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, respectively, shall be carried forward only for one, two, three, four and five years respectively :

Provided that—

(a) where the loss sustained is a loss of profits and gains of a business, profession or vocation to which the first proviso to sub-section (1) is applicable, and the profits and gains of that business, profession or vocation are, under the provisions of clause (c) of sub-section (2) of Section 14, exempt from tax, such loss shall not be set off except against profits and gains accruing or arising in India, but outside the taxable territories from the same business, profession or vocation and exempt from tax under the said provisions ;

(b) where depreciation allowance is, under clause (b) of the proviso to clause (vi) of sub-section (2) of Section 10, also to be carried forward, effect shall first be given to the provisions of this sub-section;

(c) nothing herein contained shall entitle any assessee, being a registered firm, to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-section (1), or entitle any assessee, being a partner in an unregistered firm which has been assessed under the provisions of clause (b) of sub-section (5) of Section 23 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm ;

(d) where an unregistered firm is assessed as a registered firm under clause (b) of sub-section (5) of Section 23, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm ;

(e) where a change has occured in the constitution of a firm, nothing in this section shall be deemed to entitle the firm to have set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with the provisions of clause (b) of sub-section (1) of Section 16 as exceeds his share of profits, if any, of the previous year in the firm, or to entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under the said clause (b), and where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.

(2A) Notwithstanding anything contained in sub-section (1), where the loss sustained is a loss falling under the head " Capital gains ", such loss shall not be set off except against any profits and gains falling under that head.

(2B) Where an assessee sustained a loss such as is referred to in sub-section (2A) and the loss cannot be wholly set off in accordance with the provisions of that sub-section, the portion not so set off shall be carried forward to the following year and set off against capital gains for that year, and if cannot be set off, the amount thereof not so set off shall be carried forward to the following year and so on, so however that no such loss shall be so carried forward for more than six years :

Provided that where the loss sustained in any previous year does not exceed fifteen thousand rupees, it shall not be carried forward.

(3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section.

24A. ASSESSMENT IN CASE OF DEPARTURE FROM THE TAXABLE TERRITORIES.—(1) When it appears to the Income-tax Officer that any person may leave the taxable territories 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 of the period from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of his departure from the taxable territories, or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from the taxable territories. The assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period 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 under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but 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 relevant period referred to in the first sentence of 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.

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

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of Section 22 or before he is served with a notice under sub-section (2) of Section 22 or Section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of Section 22 or under Section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of 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, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, 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.

25. ASSESSMENT IN CASE OF DISCONTINUED BUSINESS.—(1) Where any business, profession or vocation to which sub-section (3) is not applicable 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 discontiunance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

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

(3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918 (VII of 1918), is discontinued, then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered applicable no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918 (VII of 1918), is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference :

Provided that sub-sections (3) and (4) shall not apply—

(*a*) to super-tax except where the income, profits and gains of the business, profession or vocation were assessed to super-tax for the first time either for the year beginning on the 1st day of April, 1920, or for the year beginning on the 1st day of April, 1921 ;

(*b*) to a business, profession or vocation on which income-tax was at any time charged in the hands of a company under the Indian Income-tax Act, 1886 (11 of 1886), or on which income-tax would have been charged in the hands of a company for the assessment year ending on the 31st day of March, 1918, if the company having been in existence in that year had also been in existence in the year ending on the 31st day of March, 1917.

(5) No claim to the relief afforded under sub-section (3) or sub-section (4) shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place, as the case may be.

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

25A. ASSESSMENT AFTER PARTITION OF A HINDU UNDIVIDED FAMILY.—(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 the joint family property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect :

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

(2) Where such an order has been passed, or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation, 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 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 members and groups of members whose joint family property has been partitioned shall be liable jointly and severely 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.

26. CHANGE IN CONSTITUTION OF A FIRM.—(1) Where, at the time of making an assessment under Section 23, it is found that a change has occured in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted at the time of making the assessment :

Provided that the income, profits and gains of the previous year shall, for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same :

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment.

(2) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall, subject to the provisions of sub-section (4) of Section 25, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year :

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.

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

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

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

28. PENALTY FOR CONCEALMENT OF INCOME OR IMPROPER DISTRIBUTION OF PROFITS.—(1) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of Section 22 or Section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner, required by such notice, or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (4) of Section 22 or sub-section (2) of Section 23, or

(*c*) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he or it may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him a sum not exceeding one and a half times that amount, and in the cases referred to in clause (b) and (c), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income:

Provided that——

(*a*) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of Section 22;

(b) where a person has failed to comply with a notice under sub-section (2) of Section 22 or Section 34 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees;

(*c*) no penalty shall be imposed under this sub-section upon any person assessable under Section 42 as the agent of a person not resident in the taxable territories for failure to furnish the return required under Section 22 unless a notice under sub-section (*2*) of that section or under Section 34 has been served on him;

(*d*) when the person liable to penalty is a registered firm, or an unregistered firm treated under Section 23(5)(b) as a registered firm, so that the amount of the income-tax and super-tax payable by the firm itself has not been determined, that amount shall be taken to be an amount equal to the tax which would have been payable by an unregistered firm on an income equal to the firm's total income, and, in the cases referred to in clauses (b) and (c) the amount of the income-tax and super-tax which would have been avoided if the income as returned had been accepted as the correct income, shall be taken to be the difference between the amount of the tax which would have been payable by an unregistered firm on an income equal to the firm's total income and the amount of the tax payable by an unregistered firm on an income equal to the income of the firm as actually returned by the firm.

(2) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, 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 or it may direct that such partner shall, in addition to the income-tax and super-tax, if any, payable by him pay by way of penalty a sum not exceeding one and a half times the amount of income-tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

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

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

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

(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

29. NOTICE OF DEMAND.—When any tax, penalty or interest is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax, penalty or interest a notice of demand in the prescribed form specifying the sum so payable.

30. APPEAL AGAINST ASSESSMENT UNDER THIS ACT. (1) Any assessee objecting to the amount of income assessed under Section 23 or Section 27, or the amount of loss computed under Section 24 or the amount of tax determined under Section 23 or Section 27, or denying his liability to be assessed under this Act, or objecting to the cancellation by an Income-tax Officer of the registration of a firm under sub-section (4) of Section 23 or to a refusal to register a firm under sub-section (4) of Section 23 or Section 26A or to make a fresh assessment under Section 27, or objecting to any order under sub-section (2) of Section 25 or Section 25A or sub-section (2) of Section 26 or Section 28, made by an Income-tax Officer or objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of Section 44E or sub-section (5) of Section 44F or sub-section (1) of Section 46, or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under Section 48, 49 or 49F, or to the amount of the refund allowed by the Income-tax Officer under any of those sections, and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub-section (1) of Section 23A, may appeal to the Appellate Assistant Commissioner against the assessment or against such refusal or order :

Provided that no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax has been paid:

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income:

Provided further that a shareholder in a company in respect of which an order under Section 23A has been passed by an Income-tax Officer, may not in respect of matters determined by such order appeal against the assessment of his own total income.

(1A) Any person having, in accordance with the provisions of sub-section (3A), (3B) or (3C) of Section 18, read with sub-section (6) of that section, deducted and paid tax in respect of any sum chargeable under

this Act other than interest who denies his liability to make such deduction may appeal to the Appellate Assistant Commissioner to be declared not liable to make such deduction.

(2) The appeal shall ordinarily be presented within thirty days of the payment of the tax deducted under sub-section (3A), (3B) or (3C) of Section 18 or of receipt of the notice of demand relating to the assessment or penalty objected to or of the order in writing notifying the amount of total income on which the determination under sub-section (5) of Section 23 was based and the apportionment thereof between the several partners or of the loss computed under Section 24 or of the intimation of the refusal to pass an order under sub-section (1) of Section 25A, or to register a firm under Section 26A or of the date of the refusal to make a fresh assessment under Section 27, or of the intimation of an order under sub-section (1) of Section 23A or under Section 48, 49 or 49F, as the case may be ; but the Appellate Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

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

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

(2) The Appellate 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.

(2A) The Appellate Assistant Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(3) In disposing of an appeal the Appellate 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 Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of tax payable on the basis of such fresh assessment,

or, in the case of an order cancelling the registration of a firm under sub-section (4) of Section 23 or refusing to register a firm under sub-section (4) of Section 23 or Section 26A or to make a fresh assessment under Section 27,

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

or, in the case of an order under sub-section (2) of Section 25 or sub-section (1) of Section 23A, or sub-section (2) of Section 26 or Section 48, 49 or 49F,

(*d*) confirm, cancel or vary such order,

or, in the case of an order under sub-section (1) of Section 25A,

(*e*) confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of Section 25A,

or, in the case of an order under Section 28 or sub-section (6) of Section 44E or sub-section (5) of Section 44F or sub-section (1) of Section 46,

(*f*) confirm or cancel such order or vary it so as either to enhance or reduce the penalty,

or, in the case of an appeal against a computation of loss under Section 24,

or, in the case of an appeal under sub-section (1A) of Section 30,

(*h*) decide that the person is or is not liable to make the deduction and in the latter case direct the refund of the sum paid under sub-section (6) of Section 18 :

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

Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer, shall have the right to be heard either in person or by a representative.

(4) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Appellate Assistant Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

(5) The Appellate Assistant Commissioner shall, on the conclusion of the appeal, communicate the orders passed by him to the assessee and to the Commissioner.

32. APPEALS AGAINST ORDERS OF APPELLATE ASSISTANT COMMISSIONER.—*Omitted by Section 87 of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939).*

33. APPEALS AGAINST ORDERS OF APPELLATE ASSISTANT COMMISSIONER.—(1) Any assessee objecting to an order passed by an Appellate Assistant Commissioner under Section 28 or Section 31 may appeal to the Appellate Tribunal within sixty days of the date on which such order is communicated to him.

(2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under Section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made within sixty days of the date on which the order is communicated to the Commissioner by the Appellate Assistant Commissioner.

(2A) The Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-sections (1) and (2) if it is satisfied that there was sufficient cause for not presenting it within that period.

(3) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees.

(4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.

(5) Where as the result of an appeal any change is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Appellate Tribunal may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

(6) Save as provided in Section 66 orders passed by the Appellate Tribunal on appeal shall be final.

33A. POWER OF REVISION BY COMMISSIONER.—(1) The Commissioner may of his own motion call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit :

Provided that the Commissioner shall not revise any order under this sub-section if—

(*a*) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal may be made has not expired, or

(*b*) the order is pending on an appeal before the Appellate Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal, or

(*c*) the order has been made more than one year previously.

(2) The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner, made within one year from the date of the order, call for the record of the proceeding in which such order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit :

Provided that the Commissioner shall not revise any order under this sub-section if—

(*a*) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made, the time within which such appeal may be made has not expired, or in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal, or

(*b*) where an appeal against the order has been made to the Appellate Assistant Commissioner, the appeal is pending before the Appellate Assistant Commissioner, or

(*c*) the order has been made the subject of an appeal to the Appellate Tribunal :

Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(3) Every application by an assessee under sub-section (2) shall be accompanied by a fee of twenty-five rupees.

33B. POWER OF COMMISSIONER TO REVISE INCOME-TAX OFFICER'S ORDERS.—(1) The Commissioner may call for and examine the record of any proceeding under this Act and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) No order shall be made under sub-section (1),—

(a) to revise an order of re-assessment made under the provisions of Section 34; or

(b) after the expiry of two years from the date of the order sought to be revised.

(3) Any assessee objecting to an order passed by the Commissioner under sub-section (1) may appeal to the Appellate Tribunal within 60 days of the date on which the order is communicated to him.

(4) An appeal to the Appellate Tribunal under sub-section (3) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a treasury receipt in support of having paid the fee of Rs. 100 and such appeal shall be dealt with in the same manner as if it were an appeal under sub-section (1) of Section 33.

34. INCOME ESCAPING ASSESSMENT.—(1) If—

(a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under Section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income-tax have escaped assessment for any year, or, have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed,

he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is 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 or recompute

the loss or depreciation allowance ; 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—

(*i*) the Income-tax Officer shall not issue a notice under this sub-section, unless he has recorded his reasons for doing so and the Commissioner is satisfied on such reasons recorded that it is a fit case for the issue of such notice ;

(*ii*) the tax shall be chargeable 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; and

(*iii*) where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under Section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year was substituted.

Explanation.—Production before the Income-tax Officer of account books or other evidence from which material facts could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section.

(2) Where an assessment is re-opened in circumstances falling under clause (b) of sub-section (1), the assessee may, if he has not impugned any part of the original assessment order for that year either under Section 30 or under Section 33A, claim that the proceedings under sub-section (1) of this section shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the items alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made :

Provided that in so doing he shall not be entitled to re-open matters concluded by an order under Section 33B or Section 35, or by a decision of the High Court or of the Supreme Court under Section 66 and Section 66A.

(3) No order of assessment under Section 23 to which clause (c) of sub-section (1) of Section 28 applies or of assessment or re-assessment in cases falling within clause (a) of sub-section (1) of this section shall be made after the expiry of eight years, and no order of assessment or re-assessment in any other case shall be made after the expiry of four years, from the end of the year in which the income, profits or gains were first assessable :

Provided that where a notice under sub-section (1) has been issued within the time therein limited, the assessment or re-assessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if such period exceeds the period of eight years or four years, as the case may be :

Provided further that nothing contained in this sub-section shall apply to a re-assessment made under Section 27 or in pursuance of an order under Section 31, Section 33, Section 33A, Section 33B, Section 66 or Section 66A.

35. RECTIFICATION OF MISTAKE.—(1) The Commissioner or Appellate Assistant Commissioner may, at any time within four years from the date of any order passed by him in appeal or, in the case of the Commis-

sioner in revision under Section 33A and the Income-tax Officer may, at any time within four years from the date of any assessment order or refund order passed by him on his own motion rectify any mistake apparent from the record of the appeal, revision, assessment or refund as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee :

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

Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of the Indian Income-tax (Amendment) Act, 1939.

(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistakes by the Appellate Tribunal.

(3) 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.

(4) Where any such rectification has the effect of enhancing the assessment, or reducing a refund 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.

36. TAX TO BE CALCULATED TO NEAREST ANNA.—In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

37. POWER TO TAKE EVIDENCE ON OATH, ETC.—The Income-tax Officer, Appellate Assistant Commissioner, Commissioner and Appellate Tribunal shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (V of 1908) when trying a suit in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him on oath or affirmation ;

(*b*) compelling the production of documents ; and

(*c*) issuing commission for the examination of witnesses, and any proceeding before an Income-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal 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 (XLV of 1860).

38. POWER TO CALL FOR INFORMATION.—The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

(1) require any firm, or Hindu undivided family to furnish him 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 assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head " Salaries ", amounting to more than four hundred rupees, together with particulars of all such payments made ;

(4) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts.

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

CHAPTER V.

Liability in Special Cases.

40. GUARDIANS, TRUSTEES AND AGENTS.—(1) Where the guardian or trustee of any person being a minor, lunatic or idiot (all of which persons are hereinafter in this sub-section included in the term "beneficiary") is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian or trustee, 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 or sound mind and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

(2) Where the trustee or agent of any person not resident in the taxable territories and not being a minor, lunatic or idiot (such person being hereinafter in this sub-section referred to as a beneficiary) is entitled to receive on behalf of such beneficiary of, any income, profits or gains chargeable under this Act, the tax, if not levied on the beneficiary direct, may be levied upon and recovered from such 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 the beneficiary if in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordipngly.

41. COURTS OF WARDS, ETC.—(1) In the case of income, profits or gains chargeable under this Act which the Courts of Wards, the Administrators-General, the Official Trustees or 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, or any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913) (VI of 1913), are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager or trustee or trustees, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable, and all the provisions of this Act shall apply accordingly :

Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate but, where such persons have no other personal income chargeable under this Act and none of them is an artificial juridical person, as if such income, profits or gains or such part thereof were the total income of an association of persons :

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part to chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part.

(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains.

42. INCOME DEEMED TO ACCRUE OR ARISE WITHIN THE TAXABLE TERRITORIES.—(1) All income, profits or gains accruing or arising, whether directly or indirectly, through or from any business connection in the taxable territories, or through or from any property in the taxable territories or through or from any asset or source of income in the taxable territories or through or from any money lent at interest and brought into the taxable territories in cash or in kind or through or from the sale, exchange or transfer of a capital asset in the taxable territories shall be deemed to be income accruing or arising within the taxable territories and where the person entitled to the income, profits or gains is not resident in the taxable territories shall be chargeable to income-tax either in his name or in the name of his agent, and in the latter case such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax :

Provided that where the person entitled to the income, profits or gains is not resident in the taxable territories the income-tax so chargeable may be recovered by deduction under any of the provisions of Section 18 and that any arrears to 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 the taxable territories :

Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person as to the amount to be so retained, such agent or person may secure from the Income-tax Officer a certificate stating the amount to be retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount :

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person.

(2) Where a person not resident or not ordinarily resident in the taxable territories carries on business with a person resident in the taxable territories and it appears to the Income-tax Officer, that owing to the close connection between such persons the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

(3) In the case of a business of which all the operations are not carried out in the taxable territories the profits and gains of the business deemed under this section to accrue or arise in the taxable territories shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in the taxable territories.

43. AGENT TO INCLUDE PERSONS TREATED AS SUCH.—Any person employed by or on behalf of a person residing out of the taxable territories 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 non-resident person shall for all the purposes of this Act, be deemed to be such agent :

Provided that where transactions are carried on in the ordinary course of business through a broker in the taxable territories in such circumstances that the boker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first named broker shall not be deemed to be an agent under this section in respect of such transactions :

Provided further 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.

Explanation.—A person, whether residing in or out of the taxable territories who acquires, after the 28th day of February 1947, whether by sale, exchange or transfer, a capital asset in the taxable territories from a person

residing out of the taxable territories shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of the taxable territories.

44. LIABILITY IN CASE OF DISCONTINUED FIRM OR ASSOCIATION.—Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment.

CHAPTER VA.

Special Provision Relating to Certain Classes of Shipping.

44A. LIABILITY TO TAX OF OCCASIONAL SHIPPING.—The provisions of this Chapter shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of the taxable territories and carries on business in the taxable territories 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.

44B. RETURN OF PROFITS AND GAINS.—(1) Before the departure from any port in the taxable territories 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 such accounts or documents as he may require, and one-sixth 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 the company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship unitl the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

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

CHAPTER VB.

Special Provisions Relating to Avoidance of Liability to Income-Tax and Super-Tax.

44D. AVOIDANCE OF INCOME-TAX BY TRANSACTIONS RESULTING IN THE TRANSFER OF INCOME TO PERSONS RESIDENT OR ORDINARILY RESIDENT ABROAD.—(1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not resident or to a person resident but not ordinarily resident in the taxable territories, acquired any rights by virtue or in consequence of which he has within the meaning of this section power to enjoy such income, whether forthwith or in the future, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of such first-mentioned person for all the purposes of this Act.

(2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in the taxable territories, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

(3) Sub-sections (1) and (2) shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either—

(*a*) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or

(*b*) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

(4) For the purpopses of this section, an "associated operation" means, in relation to any transfer, an operation of any kind effected by any person

in relation to any of the assets transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets.

(5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident, or resident but not ordinarily resident, in the taxable territories, if--

(*a*) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to ensure for the benefit of the first-mentioned person, or

(*b*) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or

(*c*) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purposes by reason of the effect or successive effects of the associated operations on that income and on any assets which represent that income, or

(*d*) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(*e*) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income

(6) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations, and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(7) For the purposes of this section—

(*a*) the expression "assets" includes property or rights of any kind, and the expression 'transfer" in relation to rights includes the creation of those rights;

(*b*) the expression "benefit" includes a payment of any kind,

(*c*) references to income of a person not resident or of a person not ordinarily resident in the taxable territories shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under sub-section (1) of Section 23A, include references to so much of income of the company for that year or period as is equal to the amount deemed to have been distributed to that person;

(*d*) references to assets representing any assets, income or accumulations of income include references to shares in or obligation of any company to which, or obligation of any other person to whom those assets, that income or those accumulations are or have been transferred;

(*e*) any body corporate incorporated outside the taxable territories shall be treated as if it were resident out of the taxable territories whether it is so resident or not.

(8) The provisions of this section shall apply for the purposes of assessment to income-tax and super-tax for the year ending on the 31st day of March, 1940, and subsequent years, and shall apply, in relation to transfers of assets and associated operations whether carried out before or after the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939).

(9) Where any person has been charged to tax any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.

44E. AVOIDANCE OF TAX BY CERTAIN TRANSACTIONS IN SECURITIES.—(1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as "the owner") agrees to sell or transfer those securities and by the same or any collateral agreement—

(*a*) agrees to buy back or re-acquire the securities, or

(*b*) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person.

(2) The references in sub-section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.

(3) Where any person carrying on a business which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(*a*) agrees to sell back or re-transfer the securities, or

(*b*) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(4) Sub-section (3) shall effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(5) For the purpose of this section—

(*a*) the expression "interest" includes a dividend;

(*b*) the expression "securities" includes stock and shares;

(*c*) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(6) The Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities; and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

44F. AVOIDANCE OF TAX BY SALES *CUM* DIVIDED.—(1) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him, was less than the sum to which the income would have amounted if the income from such securities accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

(2) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent. of the amount of the income-tax or super-tax for any year, which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income-tax or super-tax, then those securities shall be deemed to be securities to which sub-section (3) applies.

(3) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued:

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax or that the provisions of Section 44E have been applied in his case in respect of such income.

(4) If any person fails to furnish any statement or particulars required under this section, or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of the person's total income for the purpose of income-tax or super-tax.

(5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

(6) For the purpose of this section the expression "securities" includes stocks and shares.

CHAPTER VI.

Recovery of Tax and Penalties.

45 TAX WHEN PAYABLE.—Any amount specified as payable in a notice of demand under sub-section (3) of Section 23A or under Section 29 or an order under Section 31 or Section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under Section 30, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of:

Provided further that where an assessee has been assessed in respect of income arising outside the taxable territories in a country the laws of which prohibit or restrict the remittance of money to the taxable territories, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into the taxable territories, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section income shall be deemed to have been brought into the taxable territories if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without the taxable territories or if the income whether capitalized or not has been brought into the taxable territories in any form.

46. MODE AND TIME OF RECOVERY.—(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 arears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

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

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

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908 (V of 1908) a Civil Court has 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 State the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

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

(5A) The Income-tax Officer may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income-tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Income-tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of arrears of income-tax and penalty or the whole of the money when it is equal to or less than that amount.

The Income-tax Officer may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

Any person making any payment in compliance with a notice under this sub-section shall be deemed to have made the payment under the authority of the assessee and the receipt of the Income-tax Officer shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.

Any person discharging any liability to the assessee after receipt of the notice referred to in this sub-section shall be personally liable to the Income-tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties whichever is less.

If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, further proceedings may be taken by and before the Collector on the footing that the Income-tax Officer's notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to sub-section (2) of Section 46.

Where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Income-tax Officer.

(6) If the recovery of income-tax in any area has been entrusted to a State Government under article 258(1) of the Constitution the State Government may direct with respect to that area or any part thereof, that income-tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of Section 42, or of the proviso to Section 45, 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 financial year in which any demand is made under this Act:

Provided that where the sum payable is allowed to be paid by instalments the period of one year herein referred to shall be reckoned from the date on which the last of such instalments was due.

(8) For the purposes of this section, the expression "Collector" shall include a Collector in Pakistan and the Income-tax Officer may forward a certificate under sub-section (2) to a Collector in Pakistan through the Central Board of Revenue of Pakistan, if the assessee has property in the district of that Collector.

(9) Where a Collector in the taxable territories receives through the Central Board of Revenue of India a certificate under the signature of an Income-tax Officer in Pakistan, the Collector shall proceed to recover the amount specified therein in the manner in which he would proceed to recover the amount specified in a certificate received from an Income-tax Officer in the taxable territories, and shall remit any sum so recovered by him to the Income-tax Officer in Pakistan, after deducting his expenses in connection with the recovery proceedings.

(10) The provisions of sub-sections (8) and (9) shall remain in force only so long as there are in force similar provisions in this Act as in force as part of the law of Pakistan or under any other similar Act forming part of the law of Pakistan, for the recovery of tax by a Collector in Pakistan on receipt of a certificate from an Income-tax Officer in the taxable territories.

47. RECOVERY OF PENALTIES.—Any sum imposed by way of penalty under the provisions of sub-section (2) of Section 25, Section 28, sub-section (6) of Section 44E, sub-section (5) of Section 44F or sub-section (1) of Section 46 and any interest payable under the provisions of sub-sections (4), (6), (7) or (8) of Section 18A, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

CHAPTER VII.

Refunds.

48. REFUNDS.—(1) If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Central Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess.

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

(3) Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income.

(4) 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 claim a refund of tax payable before the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), which he would not be entitled to claim but for the passing of that Act.

48A. GENERAL POWER TO MAKE REFUNDS.—*Repealed by Act VII of 1939, Section 58.*

49. RELIEF IN RESPECT OF UNITED KINGDOM INCOME-TAX.—*Omitted by Act XLVIII of 1948*

49A. RELIEF IN RESPECT OF PART B STATE AND DOMINION INCOME-TAX.—(1) The Central Government may, by notification in the official Gazette, make provision for the granting of relief in respect of income on which have been paid both income-tax (including super-tax) under this Act and either Dominion income-tax in one or more countries, or Burma income-tax.

(2) For the purposes of this section " Dominion income-tax " means any income-tax or super-tax charged under any law in force in any Part B State or in any part of His Majesty's Dominions (including the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in the taxable territories which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

(3) For the purposes of this section " Burma income-tax " means any income-tax or super-tax charged under any law in force in Burma where the laws of Burma provide for relief in respect of tax charged on income both

in Burma and in the taxable territories which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

49AA. AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION IN INDIA AND PAKISTAN.—The Central Government may enter into an agreement with Pakistan or the United Kingdom for the avoidace of double taxation of income, profits and gains under this Act and under the corresponding law in force in Pakistan or the United Kingdom and may, by notification in the official Gazette, make such provision as may be necessary for implementing the agreement.

49B. INCOME-TAX ON COMPANY'S DIVIDEND DEEMED TO HAVE BEEN PAID BY SHAREHOLDER.—Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to any of the persons specified in Section 3 who is a shareholder of a company which is assessed to income-tax in the taxable territories or elsewhere, such person shall if the dividend is included in his total income be deemed in respect of such dividend himself to have paid income-tax (exclusive of super-tax) at the rate applicable to the total income of the company for the financial year in which the dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company is liable to pay income-tax bears to the whole income of the company.

49C. RELIEF GRANTED TO A COMPANY TO BE DEEMED RELIEF GRANTED TO SHAREHOLDER.—(1) Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to a shareholder of a company which has obtained the relief referred to in Section 49 or granted under Section 49A or under the India and Burma (Income-tax Relief) Order, 1936, the shareholder shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted in respect of income-tax only to the company for the financial year preceding the year in which the dividend was paid, credited or distributed.

(2) If the rate at which a shareholder is deemed under sub-section (1) to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or Order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under Section 23 or Section 34 or by setting it off against any relief due to him under Section 48.

49D. RELIEF IN RESPECT OF TAX CHARGED IN COUNTRY NOT PROVIDING FOR RELIEF IN RESPECT OF THE INDIAN INCOME-TAX.—If any person who has paid by deduction or otherwise Indian income-tax for any year in respect of any income arising without the taxable territories in a country the laws of which do not provide for any relief in respect of income-tax charged in the taxable territories proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Indian income-tax payable of a sum equal to one-half of such Indian income-tax or to one-half of such tax payable in the said country, whichever is the less.

Explanation.—The expression "Indian income-tax" in this section means income-tax and super-tax charged in accordance with the provisions of this Act.

49E. POWER TO SET OFF AMOUNT OF REFUNDS AGAINST TAX REMAINING PAYABLE.—Where under any of the provisions of this Act, a refund is found to be due to any person the Income-tax Officer, Appellate Assistant Commissioner, or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount against the tax, if any, remaining payable by the person to whom the refund is due.

49F. POWER OF REPRESENTATIVE OF DECEASED PERSON OR PERSON DISABLED TO MAKE CLAIM ON HIS BEHALF.—Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause have been entitled to a refund under any of the provisions of this Act, or to make a claim under Section 48 or 49, is unable to receive such refund or to make such claim, his executor, administrator or, other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

50. LIMITATION OF CLAIMS FOR REFUND.—No claim to any refund of income-tax or super-tax under this Chapter shall be allowed, unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into the taxable territories :

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the commencement of the Indian Income-tax (Amendment) Act 1939 (VII of 1939), the claim shall not be allowed unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause II of Section 2 in which the income arose on which the tax was recovered, whichever period may expire later :

Provided further that a claim to refund under Section 49 of tax paid prior to the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), 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.

50A. APPEAL AGAINST REFUSAL OF REFUND.—*Omitted by Section 62 of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939).*

CHAPTER VIII.

Offences and Penalties.

51. FAILURE TO MAKE PAYMENTS OR DELIVER RETURNS OR STATEMENTS OR ALLOW INSPECTION.—If a person fails without reasonable cause or excuse—

(*a*) to deduct and pay tax as required by Section 18 or under sub-section (5) of Section 46 ;

(*b*) to furnish a certificate required by sub-section (9) of Section 18 or by Section 20 to be furnished ;

(*c*) to furnish in due time any of the returns mentioned in Section 19A, Section 20A, Section 21, sub-section (2) of Section 22, or Section 38 ;

(*d*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of Section 22, such accounts and documents as are referred to in the notice ;

(*e*) to grant inspection or allow copies to be taken in accordance with the provisions of Section 39 ;

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

52. FALSE STATEMENT IN DECLARATION.—If a person makes a statement in a verification mentioned in Section 19A or Section 20A or sub-section (3) of Section 30, or sub-section (3) of Section 33, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

53. PROSECUTION TO BE AT INSTANCE OF INSPECTING ASSISTANT COMMISSIONER.—(1) A person shall not be proceeded against for an offence under Section 51 or Section 52 except at the instance of the Inspecting Assistant Commissioner.

(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence.

54. DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT.—(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding, relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (I of 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.

(3) 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 (XLV of 1860) 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

(*d*) of any such particulars to a Civil Court in any suit or proceedings to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(*e*) of any such particulars as the Comptroller and Auditor General of India for the purpose of enabling him to discharge his functions under the Constitution.

(*f*) of any such particulars, relevant to any officer appointed by the Comptroller and Auditor General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(*g*) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850 (XXXVII of 1850), or to an Officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Constitution, when exercising its functions in relation to any matter arising out of any such enquiry, or

(*gg*) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a lawyer or registered accountant, to the authority referred to in sub-section (3) of Section 61, when exercising the function referred to in that sub-section, or

(*h*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1889 (II of 1889) to impound an insufficiently stamped document, or

(*i*) of such facts, to an authorised officer of the United Kingdom, or of any part of His Majesty's Dominions which has entered into an agreement with India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under Section 49 or Section 49AA of this Act to be given, or

(*j*) of such facts, to an officer of a State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it, or

(*k*) of such facts, to any authority exercising powers under the Sea Customs Act, 1878 (VII of 1878), or any Central Act imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(*l*) of such facts, to any person charged by law with the duty of inquiring into the qualifications of electors, as may be necessary to establish

whether a person is or is not entitled to be entered on an electoral roll, or

(*m*) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established, or

(*n*) of such particulars to the Reserve Bank of India as required by that Bank to enable it to compile financial statistics of international investments and balance of payments; or

(*o*) of such information as may be required by any officer or department of the Central Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant.

(4) 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 25A or Section 26A, or to the giving of evidence by a public servant in respect thereof.

(5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

CHAPTER IX.

Super-Tax.

55. CHARGE OF SUPER-TAX.—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, local authority, unregistered firm or other association of persons, not being a registered firm, or the partners of the firm or members of the association individually, 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 a Central Act:

Provided that where under the provisions of clause (*b*) of sub-section (5) of Section 23 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm individually on his share in the income, profits and gains of the firm and not by the firm itself:

Provided further that where the porfits and gains of an unregistered firm or other association of persons not being a company have been assessed to super-tax, super-tax shall not be payable by a partner of the firm or a member of the association, as the case may be, in respect of the amount of such profits and gains which is proportionate to his share.

36. TOTAL INCOME FOR PURPOSES OF SUPER-TAX.—Except in cases to which section 15A applies or to which by clause (*a*) of the proviso

to sub-sections (3) and (4) of Section 25 those sub-sections do not apply and subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, local authority, unregistered firm or other association of persons 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.

57. NON-RESIDENT PARTNERS AND SHAREHOLDERS.—*Omitted by Section 69 of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939).*

58. APPLICATION OF ACT TO SUPER-TAX.—(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 second proviso to sub-section (1) of Section 7, the second and third provisos to Section 8, clause (*a*) and (*b*) of sub-section (2) of Section 14 and Sections 15, 15A, 19 and 20 and the first proviso to sub-section (1) of Section 41 and Section 58F and sub-section (2) of Section 58G shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

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

CHAPTER IXA.

Special Provisions Relating to Certain Clauses of Provident Funds.

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

(*a*) a "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(*b*) an "employer" means—

(*i*) a Hindu undivided family, company, firm or other association of persons, or

(*ii*) an individual engaged in a business, professions or vocation whereof the profits and gains are assessable to income-tax under Section 10, maintaining a provident fund for the benefit of his or its employees;

(*c*) "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.

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

(2) 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.

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

(3A) An order according recognition to provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first-mentioned fund.

(4) An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from 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.

58C. CONDITIONS TO BE SATISFIED BY A RECOGNISED PROVIDENT FUND.—(1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Central Government may, by rule, prescribe—

(*a*) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in the taxable territories :

Provided that the Commissioner may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in the taxable territories notwithstanding that a proportion not exceeding ten per cent. of the employees is employed outside India.

(*b*) The contributions of an employee in any year shall be a definite portion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund:

Provided that an employee who retains his employment while serving in the Armed Forces of the Union or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940 (XVIII of 1940), or the National Service (Technical Personnel) Ordinance, 1940 (II of 1940), may, notwithstanding that he receives from the employer no salary or a salary less than he would have received had he not entered the Armed Forces of the Union or been so taken into or employed in the National Services contribute to the fund during his service in the Armed Forces of the Union or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered the Armed Forces of the Union or been taken into or employed in the national service.

(*c*) Subject to the provisions of Section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(*d*) The fund shall consist of contributions as above specified and of donations, if any, received by the trustees, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions, donations, and of securities purchased therewith and of any capital gains arising from sale, exchange, or transfer of capital assets of the fund and of no other sums.

(*e*) The fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable save with the consent of all the beneficiaries.

(*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

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

(*g*) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.

(*h*) Save as provided in clause (*g*), or in accordance with such conditions and restrictions as the Central Government may, by rules, prescribe no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident found 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.

58D. POWER TO RELAX RESTRICTIONS OF EMPLOYER'S CONTRIBUTIONS IN CERTAIN CASES.—Subject to any rules which the Central Government may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (*c*) of sub-section (1) of Section 58C—

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem; and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

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

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

58F. EXEMPTION OF ANNUAL ACCRETION FROM INCOME-TAX.—(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 or six thousand rupees, whichever is less.

(2) Interest credited on the accumulated balance of any employee in a recognised provident fund shall be exempted from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and in so far as it is allowed at a rate not exceeding such rate as the Central Government may, by notification in the official Gazette, fix in this behalf.

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

(2) Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period, of not less than

five years, and the accumulated balance due to him becomes payable such accumulated balance shall be exempt from payment of income-tax and shall be excluded from the computation of his total income :

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

(3) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (2), the Income-tax Officer shall calculate the total of the various sums of income-tax and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sum paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

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

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

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

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

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-section (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 purpose of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance :

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

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

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

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

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the employer within the meaning of clause (xv) of sub-section (2) of Section 10, incurred in the year in which the accumulated balance due to the employee is paid.

58L. PROVISIONS RELATING TO RULES.—(1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of Section 59.

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

(a) prescribing the statements and other information to be submitted with an application for recognition ;

(b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company :

(c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;

(d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn ; and

(e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

58M. APPLICATION OF THIS CHAPTER.—This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925 (XIX of 1925), applies.

CHAPTER IXB.

Special Provisions Relating to Certain Classes of Superannuation Funds.

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

(*a*) " approved superannuation fund " means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Central Board of Revenue in accordance with the provisions of this Chapter ;

(*b*) "employer", "employee" and "contribution" have, in relation to superannuation funds, the meanings assigned to those expressions in Section 58A in relation to provident funds ;

(*c*) "ordinary annual contribution" means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

58O. APPROVAL AND WITHDRAWAL OF APPROVAL.—(1) The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of Section 58P, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) The Central Board of Revenue shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Central Board of Revenue shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Central Board of Revenue shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter.

58P. CONDITIONS FOR APPROVAL.—In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied, namely:—

(*a*) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in the taxable territories:

(*b*) the fund shall have for its sole purpose the provisions of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons; and

(*c*) the employer in the trade or undertaking shall be a contributor to the fund :

Provided that the Central Board of Revenue may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund—

(*i*) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or

(*ii*) if the main purpose of the fund is the provision of annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or

(*iii*) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the taxable territories.

58Q. APPLICATION FOR APPROVAL.—(1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Central Board of Revenue may require such further information to be supplied as it thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Central Board of Revenue otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

58R. EXEMPTION OF SUPERANNUATION FUND FROM INCOME-TAX.—Income derived from investments or deposits of an approved super-

annuation fund and any capital arising from the sale, exchange or transfer of capital assets of such fund shall be exempt from payment of income-tax, and any sum paid by an employer by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of Section 15 apply:

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution.

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Central Board of Revenue may direct, either as an expense incurred in the year in which the sum is paid, or as an expense to be spread over such period of years as the Central Board of Revenue thinks proper.

58S. TREATMENT OF REPAID CONTRIBUTIONS.—(1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax during the preceding three years or during such period, if less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Central Board of Revenue may direct.

58T. DEDUCTION FROM PAY OF, AND CONTRIBUTION ON BEHALF OF, EMPLOYEE TO BE INCLUDED IN RETURN UNDER SECTION 21.—Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under Section 21.

58U. LIABILITIES OF TRUSTEES ON CESSATION OF FUND.—If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

(*a*) on account of returned contributions (including interest on contributions, if any), and

(*b*) in commutation or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

58V. PARTICULARS TO BE FURNISHED IN RESPECT OF SUPERANNUATION FUNDS.—The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax Officer, within twenty-one days of the date of such notice—

(*a*) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require;

(*b*) prepare and deliver to the Income-tax Officer a return containing—

(*i*) the name and place of residence of every person in receipt of an annuity from the fund,

(*ii*) the amount of the annuity payable to each annuitant,

(*iii*) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees, and

(*iv*) particulars of sums paid in commutation or in lieu of annuities;

(*c*) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Central Board of Revenue may reasonably require.

CHAPTER X.

Miscellaneous.

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

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

(*a*) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—

(*i*) incomes derived in part from agriculture and in part from business;

(*ii*) persons residing out of the taxable territories;

(*b*) prescribe the procedure to be followed on application for refunds;

(*c*) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under Section 27 of the Finance Act, 1920 (10 & 11 Geo. 5, c. 18), or under Section 49 of this Act;

(*d*) prescribe the year which, for the purpose of relief under Section 49, is to be taken as corresponding to the year of assessment for the purposes of Section 27 of the Finance Act, 1920 (10 & 11 Geo. 5, c. 18); and

(*e*) provided 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 conditions of previous publication.

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

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

(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months, or a payment which is under the provisions of sub-section (1) of Section 7 a profit in lieu of salary his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Central Government may grant the appropriate relief.

(3) After the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), the power conferred by sub-section (1) shall not be exercisable except for the purpose of rescinding an exemption, reduction or modification already made.

60A. POWER TO MAKE EXEMPTION, ETC., IN RELATION TO MERGED TERRITORIES OR TO ANY PART B STATE.—If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly, or removing any difficulty, that may arise as a result of the extension of this Act to the merged territories, the Central Government may, by general or special order, 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 person or class of person :

Provided that the power conferred by this section shall not be exercisable after the 31st day of March, 1955, except for the purpose of rescinding an exemption, reduction or modification already made.

61. APPEARANCE BY AUTHORISED REPRESENTATIVE.—(1) Any assessee, who is entitled or required to attend before the Apellate Tribunal or any Income-tax authority in connection with any proceeding under this Act otherwise than when required under Section 37 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or Income-tax practitioner, and not being disqualified by or under sub-section (3).

(2) In this section,—

(*i*) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings;

(*ii*) "lawyer" means a Barrister-at-Law or Solicitor or any other person entitled to plead in any Court of law in the taxable territories.

(*iii*) "accountant" means a registered accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditor's Certificate Rules, 1932, or a holder of a restricted certificate under the Restricted Certificate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue;

(*iv*) "Income-tax practitioner" means—

(*a*) any person who, before the 1st day of April, 1938, in the taxable territories or before the 1st day of April, 1949, in any of the merged territories or before the 1st day of April, 1950, in any Part B State other than the State of Jammu and Kashmir, attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee;

(*b*) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue; or

(*c*) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.

(3) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under sub-section (1); and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1):

Provided that—

(*a*) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,

(*b*) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and

(*c*) no such direction shall take effect until one month from the making thereof or, when an appeal is preferred, until the disposal of the appeal.

62. RECEIPTS TO BE GIVEN.—A receipt shall be given for any money paid or recovered under this Act

63. SERVICE OF NOTICES.—(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, 1909 (V of 1908).

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

64. PLACE OF ASSESSMENT.—(1) Where an assessee carries on a business, profession or vocation 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, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is situate.

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

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

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

Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under sub-section (1) of Section 22 and has stated therein the principal place wherein he carries on his business, profession or vocation, or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of Section 22 or under Section 34 for the making of a return:

Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made.

(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.

(5) The provision of sub-section (1) and sub-section (2) shall not apply and shall be deemed never at any time to have applied to any assessee—

(*a*) on whom an assessment or re-assessment for the purposes of this Act has been, is being or is to be made in the course of any case in respect of which a Commissioner of Income-tax appointed without reference to area under sub-section (2) of Section 5 is exercising the functions of a Commissioner of Income-tax, or

(*b*) where by any direction given or any distribution or allocation of work made by the Commissioner of Income-tax under sub-section (5) of Section 5, or in consequence of any transfer made under sub-section (7A) of Section 5, a particular Income-tax Officer has been charged with the function of assessing that assessee, or

(*c*) who or whose income is included in a class of persons or a class of incomes specified in any notification issued under sub-section (6) of Section 5.

but the assessment of such person, whether the proceedings for which assessment began before or after the 1st of April, 1939, shall be made by the Income-tax Officer for the time being charged with the function of making such assessment by the Central Board of Revenue or by the Commissioner of Income-tax to whom he is subordinate, as the case may be

65. INDEMNITY.—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.

66. STATEMENT OF CASE BY APPELLATE TRIBUNAL TO HIGH COURT.—(1) Within sixty days of the date upon which he is served with notice of an order under sub-section (4) of Section 33 the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court :

Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notices of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

(2) If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(3) If on any application being made under sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred, the assessee or the Commissioner, as the case may be, may within two months from the date on which he is served with notice of the rejection, apply to High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under sub-section (1).

(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 Appellate Tribunal 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 question of law raised thereby and shall deliver its judgment therein containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court the costs shall be in the discretion of the Court.

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

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to the Supreme Court.

(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 (2) or sub-section (3).

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

(*a*) in relation to any Part A State, or Part B State, the High Court for that State;

(*b*) in relation to Ajmer and Vindhya Pradesh, the High Court at Allahabad;

(*c*) in relation to Bhopal, the High Court at Nagpur,

(*d*) in relation to Bilaspur, Delhi and Himachal Pradesh, the High Court of Punjab;

(*e*) in relation to Coorg, the High Court at Madras;

(*ee*) in relation to Manipur and Tripura, the High Court of Assam.

(*f*) in relation to Kutch, the High Court at Bombay; and

(*g*) in relation to the Andaman and Nicobar Islands, the High Court at Calcutta.

66A. REFERENCES TO BE HEARD BY BENCHES OF HIGH COURTS, AND APPEAL TO LIE IN CERTAIN CASES TO THE SUPREME COURT.—(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 (V of 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 the Supreme Court from any judgment of the High Court delivered on a reference made under Section 66 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

(3) The provisions of the Code of Civil Procedure, 1908 (V of 1908), relating to appeals to the Supreme Court 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 the Supreme Court 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 the Supreme Court in the manner provided in sub-sections (5) and (7) of Section 66 in the case of a judgment of the High Court.

(5) Omitted.

67. BAR OF SUITS IN CIVIL COURT.—No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

67A. COMPUTATION OF PERIODS OF LIMITATION.—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.

67B. ACT TO HAVE EFFECT PENDING LEGISLATIVE PROVISION FOR CHARGE OF INCOME-TAX.—If on the 1st day of April in any year provision has not yet been made by a Central Act for the charging of income-tax for that year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding year or the provision proposed in the Bill then before the Parliament, whichever is more favourable to the assessee, were actually in force.

68. REPEALS.—*Repealed by the Repealing Act, 1927 (XII of 1927).*

THE SCHEDULE

[*See Section 10(7)*]

Rules for the computation of the profits and gains of Insurance Business

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

2. Profits and gains of life insurance business shall be taken to be either—

(*a*) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(*b*) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of Section 10 of this Act be allowed for in computing the profits and gains of a business,

whichever is the greater :

Provided that the amount to be allowed as management expenses shall not exceed—

(*a*) 7½ per cent. of the premiums received during the preceding year in respect of single premium life insurance policies, plus,

(*b*) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums payable is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year 7½ per cent. of such first year's premiums received during the preceding year, plus

(*c*) 90 per cent. of the first year's premiums received during the preceding year in respect of all other life insurance policies, plus

(*d*) 12 per cent. of all renewal premiums received during the preceding year.

3. In computing the surplus for the purpose of rule 2,—

(*a*) one-half of the amounts paid to or reserved for or expended on behalf of policy-holders shall be allowed as a deduction :

Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amount to the extent to which they are paid out of or in respect of any surplus brought forward from a previous inter-valuation period :

Provided further that if any amount so reserved for policy-holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders one-half of such amount, if has been previously allowed as a deduction, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved ;

(*b*) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of securities or other assets shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus :

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Superintendent of Insurance that having due regard to the necessity for making reasonable provision for bonuses to participating policy-holders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included in the surplus in respect of appreciation of, such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just ;

(*c*) interest received in respect of any securities of the Central Government which have been issued or declared to be income-tax free shall not be excluded but the whole amount of such interest received during the inter-valuation period shall be exempt from income-tax under the second proviso to Section 8 though not from super-tax.

4. Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that

year, credit shall not be given in accordance with sub-section (5) of Section 18 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

5. For the purposes of these rules—

(*i*) preceding year' means that year for which annual accounts are required to be prepared under the Insurance Act, 1938 (IV of 1938), immediately preceding the year for which the assessment is to be made or until the commencement of the Insurance Act, 1938 (IV of 1938), the previous year as defined in Section 2 of this Act ;

(*ii*) 'gross external incomings' means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policy-holders and interest and dividends on any annuity fund) and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of securities or other assets :

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of Section 10 would have been assessable under Section 9 shall be computed upon the basis laid down in the last named section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section,

(*iii*) 'management expenses' means the full amount of expenses (including commission) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on the realisation of, securities or other assets and any expenditure other than expenditure which may under the provisions of Section 10 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes for these rules ;

(*iv*) 'life insurance business' means life insurance business as defined in clause (11) of Section 2 of the Insurance Act, 1938 (IV of 1938) ;

(*v*) "securities" includes stocks and shares.

6. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938 (IV of 1938), to be furnished to the Superintendent of Insurance after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of Section 10 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance.

7. The profits and gains of companies carrying on dividing society or assessment business shall be taken to be 15 per cent. of the premium income of the previous year, or in the case of non-resident companies 15 per cent. of the premium income of the previous year derived from the taxable territories.

8. The profits and gains of the branches in the taxable territories of an insurance company not resident in the taxable territories, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its premium income derived from the taxable territories bears to its total premium income. For the purpose of this rule, the total world income of life insurance companies not resident in the taxable territories whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in the taxable territories.

9. These rules apply to the assessment of the profits of any business of insurance carried on by a mutual insurance association.

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,,	25	AllRowed	allowed
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		Rs. 18,000	Rs. 18,500
123	7	admission	admissible
149	1	statue	statute