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INCOME-TAX SECTIONS RE-ARRANGED

BY
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SOLICITOR



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1946

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To
THE HON'BLE SIR HARILAL JEKISONDAS KANIA, Kt.
JUDGE OF
THE HIGH COURT OF JUDICATURE
AT BOMBAY AND
SOMETIME ACTING CHIEF JUSTICE, .
THIS VOLUME IS WITH KIND PERMISSION
RESPECTFULLY DEDICATED.

FOREWORD

I have seen the four lectures on Income-Tax prepared by Mr. Nanavati. Knowledge imparted in the conversational style is acknowledged to be more easily assimilated than reading a book in print, or reading sections of an Act of Legislature, in their numerical order. The grouping of sections under heads of practical importance prevents the subject being dry. Although addressed as if to law students preparing for the profession, they are equally useful to businessmen and practising lawyers as a ready reference and a book of knowledge in respect of points which arise frequently in life. The subject of taxation being treated from that point is limited in scope and brief, but is, therefore, interesting and easy to read. The various statements of law are supported by relevant, important, recent decisions. That is useful to a mofussil man in particular as it saves him the trouble to search for decisions, which the local library may not render possible. Mr. Nanavati's personal experience as a solicitor in dealing with Income-Tax cases for some years past has enabled him to bring out the more important questions on which easy understanding of the subject is useful and necessary. I wish his effort a success.

Bombay,
19-11-1945.

H. J. KANIA.

P R E F A C E

These lectures were delivered, under the auspices of the Bombay Incorporated Law Society, to Articled Clerks studying for the Solicitor's examination. The author felt that they might perhaps be found to be useful by other students having for their subject Law, Commerce or Accountancy. He also felt that with increasing rates of taxation the general tax-payer, whether a landlord or a businessman, a professional person or an employee, would like to have a handy book of a small size which would give him sufficient information on the subject in which he was interested. He has therefore got the lectures printed.

The bare text of the Act as amended upto 15th September 1945 is annexed and a general index suffixed so as to facilitate easy reference to any particular point on which the reader requires information.

The form of the Return of the Income is printed at pages 68-73 and an explanation is given regarding the filling up of the same.

While this volume was in the press, the Indian Finance Act, 1946 (VII of 1946) was passed by the Central Legislature. The relevant sections of the Act are printed immediately before the General Index.

Material alterations have been made in the rates of income-tax and super-tax. Persons having an income upto Rs. 15,000 pay less income-tax, while the rates of income-tax in respect of income over

Rs. 15,000 have been increased. A larger relief is given in respect of earned income, and a deduction is allowed of one-fifth of the earned income upto a maximum of Rs. 4,000. Relief is now also given for super-tax in respect of earned income, and separate rates for earned income and unearned income are provided in the Schedule relating to the rates of super-tax.

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Bombay,
17th April, 1946.

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LECTURE I

TAXATION AND EXEMPTION

[SS.2(1) - 2(6C) - 3 - 4(3) - 6 - 7 - 8 - 9 - 10 - 12 -
15 - - 24 - 55 - 56 - 58 - 58 -A to 58 -V and 60]:

1. INTRODUCTION

You will see from the notes in your hands that these lectures have been arranged in an unorthodox manner. My idea is to give you an elementary but, as far as the scope of these lectures permit, a complete picture of the subject in hand and I do so with the hope that some of you at least may find these lectures a basis for a more advanced study of this dry but lucrative line of our profession. At the same time, I am attempting to make the discussion as interesting as possible and the first thing I have done is to jumble up the sections of the Income-tax Act. Many of you must have started reading the sections in their serial order and closed the book when you came to the fourth section. I have therefore disarranged and re-grouped the sections according to the different subjects which are discussed and if these lectures are ever printed, I propose to give to the book the title "INCOME-TAX SECTIONS RE-ARRANGED".

2. EVOLUTION OF THE LAW

The history of the Income Tax law is one continuous struggle between the State and the Taxpayer. The State creates the Act to start with. Then a clever lawyer creates a salient in it. Then the State smooths out the salient. Then another clever lawyer pricks a hole at a different place and the State fills it up. And so the battle goes on in a ding-dong manner with the result that the sections are put into the confusion in which you find them. Talking of clever lawyers, it might interest you to know that there is a divergence of opinion on the question whether a lawyer is entitled to help his client to evade tax legi-

timately. In a Bombay case ¹ Beaumont C. J. said that any one was entitled so to conduct his affairs within the law as to avoid incidence of taxation. The Lord Chancellor Viscount Simon, however, in a later case ² observed that though an assessee is within his legal rights in avoiding taxation, that is no reason why his efforts or those of the professional gentlemen who assist him in the matter should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods, if he succeed, is, of course, to increase *pro tanto* the load of tax on the shoulders of the great body of good citizens who do not desire or do not know how to adopt these manoeuvres.

3. SCHEME OF TAXATION

There are two acts governing taxation. One, the main act, *i.e.*, the Income Tax Act, and the other, the Finance Act. The former lays down the principles governing the income tax law; the latter act, as you know, is enacted every year and provides the rates at which income is to be taxed. These rates vary from year to year and in order to avoid amending the main act every year, it is found more convenient to set out the rates for a particular assessment year in the Finance Act for that year.

4. STEP SYSTEM AND SLAB SYSTEM

Prior to 1939 we had the system of taxation which was known as Step System. Under that system rates in respect of tax on the income went in jumps. Supposing a person had an income of Rs. 4,999. He would pay tax as at 6 pies in the rupee. But if he had an income of Rs. 5,001, he would pay at 9 pies in the rupee. The result was that for having an extra income of Rs. 2, he became liable to pay many times that amount by way of extra tax. The Legislature, therefore, came to his rescue and enacted that the extra tax would not be more than the extra income. If, for example, the extra income was Rs. 10 and the extra tax was Rs. 50, he would pay Rs. 10 only for such extra tax. Even this, however, resulted in hardship, and the act of 1939 introduced the Slab System. Under this system, successive slices of income are charged at progressively

¹ 9 I. T. R. 44, ² 1943 A. C. 377 at Page 381.

higher rates of tax, the first slice bearing no tax whatever. If, for example, a person has an income of Rs. 10,000, he pays no tax on the first one thousand five hundred rupees, pays tax on three thousand five hundred rupees at the rate applicable to incomes between Rs. 1,500 and Rs. 5,000 and further pays tax on the balance of five thousand rupees, at the rate in respect of income between Rs. 5,000 and Rs. 10,000. The system is essentially equitable and more advantageous to people with small incomes.

5. INCOME-TAX, SUPER-TAX, SURCHARGE, AND EXCESS PROFITS-TAX

The State ordinarily levies two types of tax: One, "income-tax", which according to the present law is levied on all persons having an income of over Rs. 2,000, and the other, "super-tax", which is levied on incomes over Rs. 25,000, so that a person having an income, say, of Rs. 30,000, pays income-tax as well as super-tax. In abnormal times when the State desires to have extra revenue a "surcharge" is imposed in the shape of a percentage over the income tax as well as the super-tax. In war times the "excess profits tax" is imposed. The theory is that businesses make larger profits due to the war conditions. Therefore, the normal profits of the business—called standard profits—are ascertained and a percentage on the difference between the actual profits and the standard profits is levied by way of excess profit tax. This tax is levied on businesses only and not professional income. The present lectures are confined to income tax and super tax.

6. THE CHARGING SECTION

Section 3 of the Income-Tax Act provides that "Where any act of the Central Legislature 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 the Act in respect of the total income of the previous year of every individual, Hindu Undivided Family, Company, &c." This is what is called the charging section. By this section income tax is charged on the income derived by the assessee. The Act of the Central Legislature mentioned in the Section is the Finance Act which enacts that tax shall be charged at a particular rate.

**Section 3—
Charging
Section.**

7. TAXABLE INCOME

The word "income" is not defined in the Act. Section 2 sub-section (6C), however, states what the word includes. It is not a comprehensive definition. It only includes in the word certain classes of income which but for the sub-section might not have been so included. We must, however, remember that what is sought to be taxed is income and not capital. It is not always easy to distinguish between the two. The decided cases, however, afford some guide. Let us consider a few of these cases.

Meaning of
"income"
S. 2 (6C)

A foreign company was indebted to a British Company in a large sum of money. With a view to pay off the debt the foreign company agreed to issue notes of £500 each to the British Company at a discount of 6%. It was also agreed that in case the foreign company made profits above a specified level, each note was to be redeemed at a premium of 20%. It was held that the discount and the premium were capital and not assessable to income-tax.

The principle governing such cases is that we should ask the question whether the defect in the Security is expressed in terms of interest or whether it is expressed in terms of capital. There is a defect in the Security to start with, because the loan is not issued at par and at the ordinary rate of interest. The Company might have issued the notes at par and redeemable at par but at a much higher rate of interest. In that case the defect in the Security would have been expressed in terms of interest. But if the company attained the same result by fixing the interest at a normal level and making the issue at discount or by paying a premium on redemption, the defect was expressed in terms of capital. The name of this case is *Lomax versus P. Dixon and Son*.¹

When a person sells a capital asset and obtains in exchange a sum of money payable periodically, the question arises whether the sum so received is income or capital. If the amount is in the nature of an annuity, say, for life, the payment would be income, because the man deliberately exchanges his capital asset for little annuity which is income in his hands. If, however, the consideration

which he receives can be treated as a capital sum payable by periodical instalments, then, the amounts so received are capital and not income. It was so held in the Privy Council case of *Tikari Raj*.¹

Even if the annuity is payable out of capital and not income it is still an annuity and consequently income in the hands of the payee : *Jackson's Trustees vs. Commissioners of Inland Revenue*.²

In the case of *Raja Bahadur Kamakshya Narain Singh vs. the Commissioner, Bihar and Orissa*,³ the assessee received large payments by way of royalty under various mining leases. In some cases, he was paid a lump sum by way of *salami* or premium. In other cases, he was paid an annual sum computed on a certain rate per ton on the amount of coal raised and coke manufactured subject to a minimum annual sum. It was held that the *salami* was paid for the acquisition by the lessees of the right to enjoy the benefits granted to them by the leases, and that right being a capital asset, the money paid to purchase it was payment on capital account. It was also held that the royalty being a species of annual grant was income and not capital. The royalty could not be considered to be merely the price of the coal acquired by the lessees. It was the compensation which the lessees paid to the Lessor for the occupation which the contract between them allowed. It was also held that it was immaterial for the purposes of the tax, that the income was from a wasting property.

In the case of *Jyotirindra Narayan Sinha Chowdhury*,⁴ the assessee, a Zamindar, received *salami* on granting leases of small areas of land for purposes of cultivation for periods which were not fixed. The holdings so granted were at times abandoned and might be let again by the assessee. The *salami* was not based on any idea of damage done to the land and it varied according to the demand. It was held, distinguishing the above case of *Raja Bahadur Kamakshya Narayan Singh*, that the *salami* was revenue. The position was very different from that which obtained under long-term mining leases.

In the case of *Shaw Wallace & Co.*,⁵ it was held by the Privy Council that a lump sum paid to an agent on the termination of

1 3 I. T. R. 237. 2 25 T. C. 13 3 11 I. T. R. 513. 4 13 I. T. R. 263.

5 59 I. A. 206.

his agency as a compensation for loss of the agency was capital and not income. Their Lordships gave a definition of "income" in the judgment. They observed: "Income connotes a periodical monetary return coming in with some sort of regularity or expected regularity from definite sources. The source is not necessarily one which is expected to be continuously productive, but it must be one whose subject is the production of a definite return excluding anything in the nature of a mere windfall".

One principle of income is that it must come from outside. If a body of persons contribute to a common fund in pursuance of a scheme for their mutual benefit, the persons cannot be said to have made a profit merely because they ascertain that they have overcharged themselves and a portion of the contribution is to be refunded. *Styles versus New York Life Insurance Co.*¹ So also income derived by a club from its members is not liable to be assessed to income-tax. But if the mutual society carries on business with outsiders, the income so derived is taxable.² So also if a trade association like a stock exchange performs special services for its members for remuneration, the profits therefrom are liable to tax. See Section 10 (6) of the Act.

The Legislature, however, has now made an exception, in the case of mutual insurance associations, to the rule that a man cannot pay himself. The income of such associations is taxable under Section 2 (6C).

8. HEADS OF INCOME

Section 6 of the Act gives the different heads of income which are chargeable to tax. They are:—

- (1) Salaries;
- (2) Interest on Securities;
- (3) Income from property;
- (4) Profits and gains of business, profession, or vocation; and
- (5) Income from other sources.

¹ 2 T.C. 460. ² *Carlisle and Silloth Golf Club vs. Smith*, 6 T.C. 198.

The mode of assessment is different in respect of the different heads. Let us, therefore, consider each head separately.

Section 7 deals with income from salaries. The word "salary" includes any annuity, pension or gratuity and any fees,

Section 7— commissions, perquisites or profits in lieu of or in
Salaries. addition to any salary. It also includes any advance made by the master to the employee on account of the salary. If an employer provides to the employee rent free quarters, he is deemed to have paid additional salary in the shape of the rent for the quarters, and the rent is added to the salary for taxation. On the other hand, the employer may pay a larger salary to the employee, than he would have otherwise paid, and under the terms of the employment, the employee has to spend the extra amount paid to him in the performance of his duties. That amount will be deducted from the salary for the purpose of taxation.

I have already explained to you that if a lump sum is paid to an employee as compensation for loss of employment the amount so paid is capital and not income. If, however, the amount is paid not as compensation but as remuneration for past services then the amount is treated as salary and becomes taxable.

Note that the tax becomes payable immediately on the salary becoming due or payable to the employee, whether it is actually paid or not.

Section 8, deals with income in the shape of interest on Government Securities or debentures. Tax is payable on the

Section 8— interest which is *receivable by him*. It is a matter
Interest on of common experience that when you buy
Securities. Government paper through a broker, you pay not only the purchase price at the rate at which you have bought the paper, but you also pay the interest which has accrued due thereon from the last half-year to the date of the purchase. You no doubt get it back when you receive the next half-year's interest, but as the whole of the six months' interest is receivable by you, you pay tax on the whole. It was so decided in the case of *Havelishah vs. Commissioner, Punjab*.¹

We now proceed to consider the next head, *viz.* "Income from property." This head is dealt with in Section 9. The word "property" has again a special meaning. It includes buildings and land appurtenant to buildings. Vacant lands are not taxable under the Section. They are taxable under the residuary head "Income from other sources". Again, if the building is used for a business or a profession by the owner, then also the property is not taxed under this section. Because then it becomes an asset of his business which is dealt with by Section 10.

**Section 9—
Income from
property.**

Property is taxed by ascertaining the sum for which it might reasonably be expected to let from year to year. That is called its "annual value". And the annual value is treated as the income from the property. It, therefore, makes no difference whether the property is let to a friend at a small rent or is occupied by the owner himself, because what is taxed is the annual value. However, a concession is given if the owner is in occupation, *viz.* that the annual value shall be deemed not to exceed ten per cent. of his total income.

In arriving at the annual value, the Income Tax Officer makes a distinction between landlord's burdens and tenants' burdens.

**Landlord's
burdens
and tenant's
burdens.**

A property may fetch Rs. 100 per month if the tenant has to pay for certain liabilities; *e.g.* Municipal General Tax which is ordinarily the burden of the landlord, whereas the same property would fetch Rs. 125 if the tenant had not to bear these liabilities. The Income-Tax Officer, therefore, arrives at the annual value by taking as a guide the rent actually received and adding thereto the landlords burdens and deducting therefrom any tenant's burdens (*e.g.* Water tax and Halalkhore's tax) which may have been paid for by the landlord.

Where two persons own the property indefinite shares, each of them pays tax on his own shares only. This is a recent amendment in the law. Previously the owners were treated as an association of persons and were together taxed on the income of the whole property.

Joint Owners.

The whole of the annual value is not included in the income, but certain allowances are deducted. They are enumerated in

Deductions. Section 9 Sub-section¹. The chief allowances are as follows :—

- (1) One-sixth of the annual value for repairs ;
- (2) Insurance premium ;
- (3) Interest on any mortgage or an encumbrance ;
- (4) If property has been acquired with borrowed capital, then interest on the amount borrowed ;
- (5) Ground rent ;
- (6) Land Revenue ;
- (7) Collection charges not exceeding a prescribed maximum, usually 6% of the annual value; and
- (8) Vacancies.

A question arose whether municipal taxes and the urban immovable property tax levied in Bombay should be allowed as a deduction for the purposes of taxing property. The courts have so far held that the deduction is not permissible.¹

The next head of income is an important one. It is profits and gains of business, profession or vocation. Income under this head also is to be taxed after deducting certain amounts or allowances which are enumerated in the section. The allowances are:—

**Section 10 Pro-
fits and Gains
of business,
profession or
vocation.**

- (1) Rent of the premises in which the business is carried on ;
- (2) Where the assessee is the tenant of the premises and has undertaken the repairs thereof then the amount of such repairs ;
- (3) If the assessee has borrowed monies for the business, then the amount of the interest thereon ;
- (4) Insurance premium in respect of buildings, machinery, plant, furniture, stocks, and stores ;
- (5) Expenses of current repairs to buildings, machinery, plant or furniture belonging to the assessee ; •

¹ Commissioner *vs.* M. I. Rowji, 11 I.T.R. 320.

- (6) A percentage in respect of depreciation according to the prescribed rules;
- (7) Loss made on sale or discarding of machinery or plant;
- (8) Loss made on death or permanent incapacity of animals used in the business;
- (9) Land revenue, local rates and municipal taxes in respect of the premises of the assessee;
- (10) Bonus paid to employees;
- (11) Bad debts and irrecoverable loans; and
- (12) Any other expense laid out wholly and exclusively for the purposes of the business.

As regards monies borrowed for the business, it should be noted that any interest, salary or commission which may be paid by a firm to a partner of the firm is not an allowable deduction—Section 10(4)(b).

**Borrowed Capital—
Section 10
(2) (iii).**

Regarding depreciation, special rules are made by the Central Board of Revenue from time to time (as they are authorised to make under Section 59 of the Act) and depreciation is allowed according to these rules. If, owing to the business suffering loss or otherwise full depreciation cannot be given effect to in any year, such depreciation can be carried forward to the next and succeeding years. Supposing now the value of the machinery is written down, in this manner, year after year and the written down value is ultimately Rs. 10,000/- and the machinery is sold as scrap for Rs. 8,000/-. Then, the assessee gets a further allowance of Rs. 2,000/- under Section 10 (2) (vii). If, on the other hand, the machinery is sold for Rs. 12,000/-, then Rs. 2,000/- will be deemed to be the profits in the year.

Regarding the allowance of bonuses, the Act makes special conditions, so that the revenue may not suffer by any excessive bonus paid to the employees. It is, therefore, enacted that the amount of the bonus should be reasonable having regard (a) to the salary of the employee, (b) to the profits made in the year and (c) to the general practice in similar businesses of awarding bonuses.

**Bonuses—
Section 10
(2) (x)**

There is a difference between bad debts and irrecoverable loans. If an assessee carries on a banking or money lending business, then money is his stock-in-trade. If, therefore, any loan advanced by him is irrecoverable, the loss is allowed to him as a business expense. Before an assessee, however, can claim such a loss, he must satisfy the authorities (1) that he is doing banking or money-lending business, (2) that the loan is made in the ordinary course of such business and (3) that it had become irrecoverable during the accounting year. Every amount which a person expends is not an amount advanced in the ordinary course of a money-lending business, even though the person is a money-lender. Before he can claim the allowance he must show that the advance was an ordinary money-lending transaction. If, for example, a man arranges to obtain a valuable agency, and as a condition of obtaining the agency, he has to make an advance of a lakh of rupees and the monies are ultimately lost, an allowance cannot be claimed under the Section.¹

As regards bad debts, the same can be allowed under the Section if they relate to the business. They can, of course, be allowed only if the assessee keeps his accounts on what is known as the "mercantile basis" and not the "cash basis". If a person enters in his books only what he receives and not what is due to him, he keeps the accounts on the cash basis. If, however, he makes an entry in his books immediately an amount is due to him by a party and debits that party, with the amount he is said to keep the accounts on the mercantile basis. A moment's reflection will make it clear that bad debts can only be allowed if the assessee adopts the mercantile basis.

Now, suppose an assessee is entitled to a debt of Rs. 5,000 and he is allowed as a deduction Rs. 3,000 on the ground that not more than Rs. 2,000 can be recovered from the debtor. If supposing ultimately Rs. 2,500 are recovered from the debtor, then Rs. 500 will be deemed to be the profit of the year. If, on the other hand, Rs. 1,000 are ultimately recovered, then Rs. 1,000 more will be allowed as a bad debt in the year.

1 Sir Chinubhai Madhavbhai vs. Commissioner, Bombay, 5 I.T.R. 210; Commissioner, C.P. and U. P. vs. Motiram, 8 I. T. R. 132.

The last head of allowance, *viz.*, business expenditure, is the most important head and is the subject-matter of numerous decisions. Here, again, two conditions must be fulfilled: (1) The expenditure must be laid out wholly and exclusively for the purposes of the business and (2) it must not be of a capital nature. The law on the subject is the counter-part of the legal principle that income and not capital is to be taxed.

In one of the earliest cases, *viz.*, Vallambrossa Rubber Co. *vs.* Farmer¹ a test was suggested for ascertaining whether the expenditure was of a capital nature. Lord Dunedin observed that if an expense was made once and for all it would be a capital expense and not a revenue one. In a later case, *viz.*, Atherton *vs.* The British Insulated and Helsby Cables², Lord Case said "when an expenditure is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of the trade, there is very good reason for treating such an expenditure as properly attributable not to revenue but to capital." This has become a leading case on the subject and the test in all cases is, whether the expense in question brings into existence a capital asset or advantage. If so, it is of a capital nature and cannot be deducted as an allowance.

It may be useful to mention another case on the subject, which explains Atherton's case. That is the recent case of Southern *vs.* Borax Consolidated Ltd.³ In this case a company acquired land in America for the purpose of its business. An action was brought against it and it had to incur expenditure to protect its title. The expenditure was allowed as a business-expenditure on the ground that a capital asset had not been acquired or developed but only preserved.

Regarding the other condition, *viz.*, that the expenditure must be laid out or expended wholly and exclusively for the purpose of the business, the leading case on the subject is that of Strong *vs.* Woodfield.⁴ In this case, a brewing company which also carried on the business of inn-keepers, incurred

1. 5 T. C. 529. 2. 10 T. C. 155. 3. 10 I. T. R., Supp. 1. 4. 5 T. C. 215

damages on account of injuries caused to a visitor by the falling of a chimney. The damages were not allowed as a deduction. The Lord Chancellor observed that every loss cannot be allowed as a deduction, for it may be only remotely connected with the trade.

While we are on this subject, it may be profitable to draw your attention to Section 24 of the Act which deals with set off of losses. If an assessee sustains a loss in any year under any of the heads mentioned in Section 6, he is entitled to have the loss set off against his income under any other head in that year. If, for example, he has made a loss in business to the extent of Rs. 10,000 and his income from property and Government Securities is Rs. 15,000, he is liable to pay tax on Rs. 5,000 only. Now, supposing his other income is only Rs. 7,000, the whole of Rs. 10,000 cannot be set off. He is in these circumstances entitled to carry forward the loss to the next year and deduct Rs. 3,000 from any profits which he may make in the same business in the next year. In like manner, he is entitled to carry forward losses to succeeding years upto a maximum of six years. But the loss so carried forward can only be set off against profits from the same business and not those from any other business or any other income in the next or the succeeding years.

Before concluding the subject of profits and gains of business, I should point out that income under the head can only be taxed and the various allowances can only be given if the business has been "carried on" by the assessee, because these words are used in the Section. The result is that an assessee is not entitled to set off of losses of a defunct business against income from other sources—*Southern Indian Industrials, Ltd. vs. Commissioner, Madras*.¹

The last head under Section 6 is the residuary head, *viz.*, income from other sources. The Section has been amended in 1939 and made very wide and comprehensive. So that, if any receipt by an assessee can be classed as income and it is not taxable under any other head of Section 6, it becomes taxable under this residuary head. This head includes income from dividends, from directors' fees and as I have previously observed income from

vacant pieces of land. Any expenditure incurred solely for earning the income will be allowed as a deduction provided it is not of a capital nature and is not a personal expense of the assessee. An assessee is also entitled to depreciation, if the asset from which he derives the income is of a wasting nature, *e. g.*, machinery, plant or furniture which he may let out.

You must have noticed, whilst considering income from property, that depreciation is not allowed under Section 9, because the assessee gets an all-including one-sixth of the annual value for repairs. If, on the other hand, the building is used for a business, then he is entitled to depreciation under Section 10 (2) (vi). Now, supposing an assessee lets out a cinema plant and he cannot do so without letting also the building wherein the plant is affixed, then he is entitled to depreciation and expenses of repairs in respect of such buildings also. This is what is provided in Section 12 (4).

Sec. 12 (4)—
Letting of
Machinery
with
buildings.

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9. INCOME EXEMPT FROM TAXATION

The law exempts from taxation certain kinds of income. They are collected in Section 4, Sub-section (3). The most important exemptions are in respect of charitable income and agricultural income.

Section 4 (3).

“Charitable purpose” has been defined in the last paragraph of Section 4. It includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. The income of a religious trust is also exempt from taxation, but not the income of a private religious trust which does not enure for the benefit of the public.

Charitable
Income.
Ss. 4 (3) (i)
4 (3) (ia)
4 (3) (ii)

relief and the advancement of any other object of general public utility. The income of a religious trust is also exempt from taxation, but not the income of a private religious trust which does not

The definition of “charitable purposes” has been based on the definition of charity given in the speech of Lord Macnaghten in the famous case of the Commissioners for Special Purposes of Income-Tax *vs.* Pemsel.¹ Lord Macnaghten observed in that case: “Charity in its legal sense comprises four principal divisions: Trusts for the relief of poverty, Trusts for the advancement of education, Trusts for the advancement of religion and Trusts for

¹ 1891 A.C. 531=3 T.C. 53.

other purposes beneficial to the community not falling under any of the preceding heads". It has been pointed out by the Privy Council in the recent case of *All-India Spinners' Association vs. The Commissioner, Bombay*,¹ that the definition in the Indian Income-Tax Act is materially different from the definition in *Pemsel's* case. Accordingly, many incomes would be exempt from taxation as charitable in India, although, perhaps, they would not be considered charitable in England. Specially, any object, tending to general public utility, would be considered to be charitable. The supplying the country with an organ of educated opinion like a newspaper has been held to be an object of general public utility, and this even though the paper may acquire a particular political complexion.² So, also, the establishment of an expert organisation for hand-spinning and Khaddar has been held to be a charitable purpose.³

Trusts for political objects have never been considered to be charitable, either in England or in India. The reason is that it is very difficult for the court to enforce the trust without lending support to one or other political party. The important Indian cases on the point are *Subbas Chandra Bose vs. Gordhandas Patel*⁴ and in *re: Lokmanya Tilak Jubilee Fund*.⁵

For the purpose of ascertaining whether a trust is charitable, the view of the Settlor and the private opinion of the judge trying the case are both irrelevant. In *re: Hummeltenderg Beatty vs. London Spiritualistic Alliance Ltd.*⁶ The standard to be applied is the customary law and the common opinion amongst the community to which the party intended to be helped belongs. See the "*Tribune*" case referred to above.

To enable the assessee to claim exemption, it must be shown that the trusts are definite and not vague. The intention to create the trust must be indicated by words or acts with reasonable certainty and the purpose of the trust, the trust property and the beneficiaries must be indicated and in such a way that the Trust could be administered by the Court if

1 12 I.T.R. 482 2 *The Tribune Case*, 7 I.T.R. 415. 3 In *re: The*

All-India Spinners' Association, 12 I.T.R. 482 4 1940 Bom. 254.

5 10 I.T.R. 26. 6 1923 I Ch. 237.

occasion arose for the same. *Chotabhai Patel vs. Jnan Chandra Basak*.¹

Section 4(3)(i) of the act exempts income derived from property held under trust or other legal obligation wholly for religious or charitable purposes. So that, if exemption, is claimed in respect of the whole income, it must be shown that there is a definite trust to hold the property for religious or charitable purposes only and for no other object. The property may be any kind of property. In the "Tribune" case the property was held to be the stock and good will of the press and newspaper. In *All India Spinners' Association's Case*, the property was held to be the organisation and the undertaking as well as the fluctuating stock of yarn and cloth.

If a trust has for its objects some purposes which are charitable and others which are not charitable and the trustees can apply the trust fund for any of the objects, then the whole trust is bad and no exemption can be claimed. It was so decided by the Privy Council in the case of *Maulana Mahomed vs. Commissioner C. P.*² and by the Bombay High Court in *Lokmanya Tilak Jubilee Fund Case*³ and *Commissioner, Bombay, vs. Karim Brothers*⁴.

If, however, a definite part of the income, *e.g.*, ten per cent., is held in trust for religious or charitable purposes, then the income actually applied or finally set apart for application to the religious or charitable purposes, will be exempt from taxation under the latter part of Section 4(3)(i).

Sometimes a charitable or religious institution carries on a business. The income from such business is exempt under Section 4(3)(ia) provided it is applied solely to the purposes of the institution and either the business is carried on in the course of the carrying out of a primary purpose of the institution or the work in connection with the business, is mainly carried on by the beneficiaries of the institution, *e.g.*, an industrial institute.

**Income of
religious or
charitable
institution—
Sec. 4(3)
(ii)**

Any income of a religious or a charitable institution, which is derived from voluntary contributions and is applicable solely to religious or charitable purposes is also exempt under Section 4(3)(ii).

We now pass on to the next head of exempted income, *viz.*, **Agricultural Income—Section 4(3) (viii)**. Section 2(1) of the Act. It means:—

- (a) Any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in British India or is subject to a local rate assessed and collected by officers of the Crown as such;
- (b) Any income derived from *such* land by:—
 - (i) Agriculture, or
 - (ii) The performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind, to render the produce raised or received by him fit to be taken to market, or
 - (iii) The sale by a cultivator or receiver of rent in kind of the produce raised or received by him in respect whereof no process other than that referred to in sub-clause (ii) has been performed;
- (c) Any income from any building required as a dwelling-house or a store-house or other out-building which is on or in the immediate vicinity of the land referred to above and is owned and occupied by the receiver of the rent or revenue by reason of his connective with the land or is occupied by the cultivator or the receiver of the rent in kind for the purposes mentioned in (b) (ii) or (b) (iii) above.

Therefore, the first important condition is that the land must be paying land revenue or local rate to the Government. If the land is in an Indian State then the income therefrom is not exempt. Secondly, if it is income from such land, then it must be derived by agriculture pure and simple, or at most the farmer might employ any process ordinarily employed by farmers, so that

the produce may be made more fit to be sold in the market. The question whether the process is of this kind is a question of fact. It has thus been held that the process known as "flue curing" employed on tobacco leaves is one which was covered by the Section and the income in the case was treated as agricultural income—*Commissioner, Madras vs. Katragadda*¹. It has also been held that the manufacture of sugar is not such a process, and income derived from manufacture and sale of sugar is not exempt as agricultural income: *Bhikanpur Sugar Concern*². A sugar company may do agricultural work; e.g., planting the sugar cane. Income derived therefrom is exempt from taxation. But the manufacture of sugar by special processes and with the help of machinery cannot be termed a process which an ordinary farmer employs so that he may be able readily to sell his produce in the market. So also the manufacture of tea from green leaves is not a process of the kind mentioned in the Section. The entire process is a combination of agriculture and manufacture—*Killing Valley Tea Company vs. Secretary of State*³. Rules have now been framed to ascertain what part of the income of such mixed concerns should be treated as agricultural income and what part should be considered as income from business—See Rules 23 and 24.

If there is no cultivation of the land as in the case of forests of spontaneous growth, the income cannot be considered to be derived by means of agriculture, and is not exempt: *Maharajah of Kapurthala vs. Commissioner, C. P. and U. P.*⁴

If a person earns an income casually, it is not subject to tax. Such income, however, must not arise from business or the exercise

Casual Income of a profession, for in that case it would be taxable
—Section even though the transaction may be a single
4 (3) (vii). transaction. Difficult questions sometimes arise as to whether a particular income in the hands of the assessee is business income or enhancement of capital. The question usually arises in connection with purchase and sale of shares and securities. The guiding principle is to ascertain with what intention the assessee purchased the shares and whether he

¹ 12 I. T. R. 1. ² 1 I. T. C. 29. ³ 48 Cal. 161. ⁴ 13 I. T. R. 74.

purchased them with a view to sell them off later and make a profit, or whether he purchased them as an investment. In one case gold was purchased by an assessee in the year 1931 and it was sold in the year 1936 and yet the transaction was treated as a business and the profits were taxed: *Biharilal Jhanda Mal*.¹

Income made by person by betting on horses or by running horses in races is considered to be casual and is not subject to

Horse— tax and similarly any loss made in these operations
Racing. cannot be set off against the other income of the assessee. In re: *Lala Indra Sen*.²

Provident Funds are always favoured by the State as encouraging thrift. Persons getting the benefit thereof are entitled to exemption from tax in respect of the same. But the funds must be recognised provident funds, that is to say, they must be funds to which the Provident Funds Act 1925 applies or funds which are recognised under the Income-Tax Act under the special procedure laid down for the same. The Provident Funds Act 1925 deals with Provident Funds for the benefit of employees of Government, Railways and certain local authorities or public bodies. If a private person, *e.g.*, a company desires to establish a provident fund for its employees, it has to obtain recognition to such provident fund from the Commissioner under Section 58-B. The Commissioner will not accord recognition unless the conditions mentioned in Section 58-C are complied with. One of the conditions is that the employees should be employed in India or should be under an employer whose principal place of business is in British India. The Commissioner is entitled to make an exception in some cases. Another condition is that the contributions of the employer should not exceed those of the employee in any year, unless the Commissioner so allows. The provident fund should be vested in two or more trustees under a trust which should not be revocable except with the consent of all the beneficiaries.

The Central Board of Revenue may accord approval to a Superannuation Fund which complies with the conditions mention-

Superannuation Funds—Ss. 58 N to 58 Q. ed in Sec. 58-P. of the Act. The Funds should be established under an irrevocable trust and should have for its sole purpose the provision of annuities for employees on their retirement at or after a specific age or on their becoming incapacitated before such retirement, or for the widow, children or dependants of the employee on his death.

Income derived from the investments of Provident Funds and Superannuation Funds is exempt from payment of tax, the former under Sections 4(3)(iv) and 4(3)(ix) and the latter under Section 58-R. Further, the contributions of the employers and the employees to such funds although they are treated as salary paid to the employee are exempt from tax, provided they do not exceed $\frac{1}{3}$ th of the salary in the year or Rs. 6,000 whichever is less. Interest credited on the accumulated balance of the employee in a provident fund is also exempt if and in so far as it does not exceed one-third of the salary for the year and if the rate of interest does not exceed the prescribed rate. However, though exemption is granted in respect of contributions as stated above, the amount so exempted is added to the total income of the assessee for rate purposes.

There are other exempted incomes which you will find enumerated in the remaining clauses of section 4(3). Among them are income of accredited representatives of Indian States for political purposes, Consuls and Trade Commissioners and income of local authorities like Municipalities, except when such authority carries on a business other than that of supplying a commodity or service within its own jurisdictional area.

There are certain other exemptions which have been given by the Central Government under the power reserved to it by Section 60 of the Act. Among them are scholarships granted to meet the cost of education, the allowances attached to the Victoria Cross, the Military Cross and certain other decorations interest on Government Securities belonging to Princes of India as their private property, interest on deposits in Post Office Savings Banks, Yield

of Post Office Cash Certificates, pension granted to military officers and others. Under Sub-Clause 3 of the said Section 60 of the Act no further exemptions can be granted by the Central Government after 1st April 1939.

10. OTHER DEDUCTIONS ALLOWED FOR PURPOSES OF TAX

The exemptions which are enumerated in Section 4 (3) *e. g.* for charitable income or agricultural income are absolute exemptions, that is to say, they are not included in the total income of an assessee and are not taxed at all, nor are they otherwise taken into account for tax purposes. Over and above these, there are certain other deductions which are made from the total income, so that the amount of such deductions does not bear tax. The amounts, are, however, included in the total income for rate purposes. As I have already told you income-tax is charged at increasing rates on increasing incomes. The rate of tax is therefore an important factor from the point of view of the assessee, as well as the State. Now, supposing you own certain tax-free securities and the interest thereon received by you amounts to Rs. 5000. Supposing your other income is Rs. 12,000. You will not pay any tax on Rs. 5000 being the amount of the interest, but the sum is added to your other income for rate purposes, so that you pay tax on the remaining Rs. 12,000 at the rate applicable to an income of Rs. 17,000.

The instances of the classes of income which do not bear tax but which are included in the total income for rate purposes are given in Section 16 (1) (a). They are as follows:—

(a) Contributions to Provident Funds, and Superannuation Funds. We have already discussed these. Tax is not payable in respect thereof under Section 15, 58-F and 58-R.

(b) Interest on tax-free securities. These are exempt under Section 8 provisos 2 and 3.

(c) Insurance Premia. These are dealt within Section 15. They are not really incomes. But the State with a view to encourage the habit of saving allows a deduction from the income in respect of premia paid by an assessee to effect an insurance on his life or on the

**Insurance
Premia**

life of his wife or husband, or in respect of a deferred annuity on such life. If the assessee is a Hindu undivided family, relief is given in respect of an insurance on the life of any male member of the family or his wife. If the assessee is a servant of the Crown and any sum is deducted from his salary in accordance with the conditions of his service for securing to him a deferred annuity or making provision for his wife or children, then such sum upto a maximum of one-sixth of the salary is also deducted from the income. That is, of course, a kind of an insurance by the Crown. See the Second proviso to section 7(1). However, the aggregate sum exempted in respect of insurance premia and the assessee's contributions to provident funds is limited to one-sixth of the total income of the assessee or Rs. 6,000/-- whichever is less, in the case of individuals and one-sixth of the total income or Rs. 12,000/-- whichever is less in the case of Hindu Undivided Families. A recent amendment of the Section 15 provides against a deduction being allowed in respect of single premium policies. The amendment has been made by the addition of sub-section (2-A) to the Section, whereby it is enacted that exemption shall not be allowed for so much of any premium made on a policy other than a contract for a deferred annuity as is in excess of ten per cent. of the capital sum assured. In calculating such capital sum, no account is to be taken of the value of any premiums agreed to be returned or any benefit by way of bonus.

(d) Share of the assessee as partner in the profits of an unregistered firm on which tax has already been paid by the firm. This will be considered later when we deal with unregistered firms.

(e) Share of assessee in the income of an association of persons on which tax has already been paid by the association. This will be also dealt with later when we discuss association of persons.

(f) Income accruing within an Indian State, unless received in or brought into British India. This will be discussed later when we deal with taxation of residents.

Items (d), (e) and (f) are exempted under Section 14 (2).

(g) Earned income allowance. This is a new allowance introduced in 1945 by Ordinance No. IX of 1945. The definition of the words "earned income" is given in the newly added sub-section

6AA of section 2. The expression means any income of an assessee (other than a company)—

- (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 super-annuation or other allowance given to the assessee in respect of his past services, or the past services of a deceased person.

If the income is exempt from tax under Section 14 (2) or a Notification issued under Section 60, *e.g.* income arising in an Indian State, which is not brought into British India, or an allowance attached to Victoria Cross, then such income will not be considered to be "earned income" for the purposes of the Section.

A new Section 15A is also introduced by the Ordinance, under which tax shall not be payable by an assessee in respect of such portion of the 'earned income' included in his total income as is directed by the Annual Finance Act to be deducted in making the assessment for that year. The Finance Act of 1945 allows an exemption of 1/10th of the "earned income," subject to the maximum of Rs. 2,000/-.

There is also a further advantage given in respect of "earned income" (which is not available for other deductions, *e.g.* in respect of insurance premium), *viz.* that, for the purposes of determining the rate at which income tax is payable by the assessee, his total income shall be deemed to be the total income reduced by the amount which is allowed to be deducted in respect of the "earned income." The result is that, in effect, the assessee gets the benefit of the deduction at the maximum rate in his slabs.

If, for example, an assessee's income as a solicitor is Rs. 30,000/-, and he pays Rs. 6,000/- by way of insurance premia, he becomes entitled to an allowance of Rs. 2,000/- in respect of the earned income. He also becomes entitled to a deduction of Rs. 5,000/- (being 1/6th of his total income), in respect of the insurance premium. Tax is, therefore, calculated on an income of Rs. 28,000/- at the average rate, and out of this amount, tax at the same rate, calculated on Rs. 5,000/-, is deducted. The balance is payable by the assessee as income tax for the year.

Note that the relief in respect of the earned income is given for income tax only, and not for super tax.

LECTURE II

CLASSIFICATION OF ASSESSEES

[*Ss. 1 - 2(6A) - 2(15) - 4 - 4A - 4B - 10(7) - 12A - 14 - 16 - 17 - 20 - 23(5) - 23A - 24B - 25A - 26 - 26A - 40 - 41 - 42 - 43 - 44D - 44E - 44F and 49B.*]

In the earlier lecture we have discussed different classes of income. Now let us consider different classes of assessee.

1. TO WHOM THE ACT APPLIES

Section 1 of the Act mentions the persons to whom the Act applies. It applies to:—

- (a) Every person in, or connected with British India ;
- (b) British subjects, in the service of the Crown or of local authorities established by Government, in Indian States and tribal areas ; and
- (c) All other servants of the Crown in Indian States and Tribal areas.

2. CLASSIFICATION

Assessee are classified according to (1) Status and (2) Residence.

The Act classifies assessee as under in connection with Status:—

- (a) Individuals ;
- (b) Hindu undivided families ;
- (c) Companies ;
- (d) Local authorities ;
- (e) Firms ; and
- (f) Association of persons.

We shall later consider the special features relating to the assessment of these different classes. Let us first consider the classification according to residence.

In my last lecture I told you that Section 3 of the Act is the Charging Section. That section charges tax on "the total income"

of the year of the assessee. It, therefore, becomes necessary to ascertain what that expression means. **"Total Income" and "Total World Income"—S. 2 (15).** It is defined in Section 2 (15) and means the total income, profits and gains referred to in Section 4 (1) computed in the manner laid down in the Act. Section 4 contains the classification of assesseees according to their residence. The total income is different for different assesseees according to whether they are resident in British India or not. The expression "total world income" which is also defined in Section 2 (15) means all income wherever accruing or arising, except income to which the Act does not apply as mentioned in Section 4 (3); *e.g.*, Charitable income, agricultural income, etc. You must therefore remember that an assessee is liable to pay tax on his total income and not on his total world income. It may be that in case of some assesseees his "total income" includes his total world income. In case of other assesseees the total world income is considered for rate purposes.

"Residents," "Non-Residents," "Persons not ordinarily resident"—Ss. 4-4A-4B. The classification according to residence is as follows: An assessee may be a resident in British India or a non-resident. A resident may again be ordinarily resident or not ordinarily resident.

For ascertaining whether a person is resident or not different tests are applied to assesseees having different status.

Dealing with individuals first, he is resident in British India, in any year if he :—

- (a) Lives in British India for 182 days or more in the year ;
or
- (b) Maintains a dwelling house in British India for 182 days or more in the year and is in British India for any time in the year—he may be here even for a day ; or
- (c) Having been in British India for 365 days or more in the four years previous to that year, is in British India for any time in that year otherwise than on an occasional or casual visit ; or

- (d) Is in British India for any time in the year and the Income-Tax Officer is satisfied that he is likely to remain there for three years or more.

That is provided by S. 4A. To take an example. An assessee will be deemed to be resident in British India in 1944, if he was there for 7 months in that year or if he kept a house for 7 months in that year and lived there for a week in the year or if he was in British India between 1940 and 1943 for different periods amounting in all to 13 months and was in British India in 1944 for a month. Then, again, if he came down to British India in December 1944 and the Income-Tax Officer is satisfied that he is not likely to leave British India for another three years, he will be deemed to be resident in British India in 1944.

For Hindu undivided families, firms and associations of persons, a different test is applied. These bodies are deemed to be resident in British India unless the control and management of their affairs is situated wholly outside British India.

As regards a Company, a third test is applied, which is, at any rate in part, an artificial one. The Company is resident in British India in any year if either the control and management of its affairs is situated wholly in British India in that year or its income in British India in the year exceeds its income outside British India in that year.

An assessee who is deemed to be not "ordinarily resident" is resident to start with. If he fulfils certain conditions, he qualifies **Not ordinarily Resident.** as a person not ordinarily resident and gets certain advantages which I shall explain later. Otherwise, he is resident and ordinarily resident.

The conditions for qualifying as "not ordinarily resident" are again different according to the different status of the assessee. They are given in S. 4B.

An individual is not "ordinarily resident" in British India in any year if

- (1) He has not been resident in British India in nine out of the ten years preceding that year, or

- (2) He has not during the seven years preceding that year been in British India for periods amounting in all to more than two years.

As regards the first alternative, the word "resident" is controlled by its definition in Section 4A mentioned above, and we have to ascertain whether in each of the nine years out of the ten years preceding the year in question the individual was resident according to the conditions of residence laid down above for individuals. Pursuing the example given above, if the question was whether the assessee was ordinarily resident or not ordinarily resident in 1945 and we ascertain that he did not keep a house in British India at all and was also not in British India between 1935 and 1939 but was in British India for about 100 days each between 1940 and 1943 and was also in British India for a month in 1944—the answer would be that he was not ordinarily resident in 1945 because he was not resident between 1935 and 1943 but was resident in 1944.

As regards the second alternative, the total period of stay in British India during the seven years preceding the year in question is considered. If such total exceeds two years he is not ordinarily resident.

A Hindu undivided family is deemed to be ordinarily resident in British India if its manager is ordinarily resident in British India. For such a family, we have, therefore, to ascertain first, if any part of the control or management of its affairs was in British India in the year in question. If so, the family was resident in British India in that year, whether such control was exercised by the manager or any other member of the family. If, however, the manager of the family was not a resident (according to the definition given in Section 4A) in nine out of the ten years preceding the year in question or if the manager was away for more than two years during the seven years preceding the year in question, then the family would be deemed to be not ordinarily resident in that year. The residence contemplated by the Section is not necessarily the residence of the person who is the Manager during the year of account. If a Manager dies and

another Manager succeeds him, the periods of residence and stay in British India of the successive Managers of the Family during its continued existence will count for the purposes of Section 4B. See *S. Marimuthu Pillai vs. The Commissioner of Madras*¹.

So far as a firm or an association of persons or a company is concerned, we have to ascertain if it is "resident" according to the definition given in Section 4A. If it is so resident, it is also ordinarily resident. These bodies cannot be resident but not ordinarily resident.

Non-residents are not defined in the Act, but it is not necessary to do so, because, if a person is not resident according to the Act, then he is a non-resident.

3. TAXATION OF ORDINARY RESIDENTS.

If a client comes to you for advise on the question, on what income he has to pay tax, the first thing you would do would be to ascertain whether he is ordinarily resident or not ordinarily resident or non-resident. This, you would have to consider by reference to the particular accounting year. Under Section 3, it is the income of the previous year which is charged to tax and under section 4 we have to consider whether the assessee was resident or not in that accounting year. What the expression "the previous year" exactly means we shall consider later. For the present it would be sufficient to understand that when tax is paid in respect of a year, that is to say, an assessment year, the income of that year is not brought to tax, but the income of the year previous to that year is taxed. That makes it easy for the taxing authorities to calculate the income even in the beginning of the assessment year. "The previous year" is always a year ending before the commencement of the assessment year, but varies according to the method adopted by different assesseees. The previous year" is also in the language of taxation called "the accounting year, in respect of assesseees who are maintaining accounts.

If now your client was ordinarily resident in the accounting year—and this you would ascertain according to the tests which I have already explained—then he would have to pay tax on the following incomes:—

**Taxation of
Ordinary
Residents—**

Ss. 4(1) and 42.

- (a) Income received or deemed to have been received by him in British India in the accounting year ;
- (b) Income which accrued or arose to him or which is deemed to have accrued or arisen to him in British India in the accounting year. What income, though not actually accruing or arising in British India, is deemed to have so accrued or arisen is mentioned in S. 42 and in the explanation 3 to S. 4(1). It will be discussed hereafter.
- (c) Income which accrued or arose to him outside British India (other than in an Indian State) during the accounting year ;
- (d) Income which accrued outside British India, in the years prior to the accounting year but after 1st April 1933, which was brought into British India in the accounting year. Such income is ordinarily called a remittance.

The above four classes of income are actually taxed. Over and above these, the following class of income is also included in the total income for rate purposes, but is itself exempt from payment of tax under Section 14(2)(c), *viz.*, income which accrued or arose to the assessee, in the accounting year in an Indian State provided it was not received or deemed to be received in or brought into British India in the accounting year and provided further it was not income which is deemed to have accrued or arisen in British India under S. 42. If it was received or brought into British India or is deemed to have accrued in British India it is actually taxed.

**Income in
Indian States—
S. 14 (2) (c).**

As regards this last mentioned income which is itself exempt from tax, but is added for rate purposes, it would be only fair that when it is subsequently brought into British India and becomes liable to be taxed as a remittance, some relief should be given in respect of the rate. It is, therefore, enacted by Section 17 (4) that when any such remittance is made, tax is paid, in respect of the accounting year in which the remittance is made, on the total income for that year, including the amount of the remittance, at the rate applicable to the total income minus the remittance or the rate applicable to the

remittance itself, whichever alternative produces the larger tax. For example, if an assessee earns in 1944 Rs. 2 lacs in British India and Rs. 6 lacs in an Indian State, his total world income is Rs. 8 lacs. He pays tax on Rs. 2 lacs at the rate applicable to Rs. 8 lacs. If in 1950 he brings into British India the said sum of Rs. 6 lacs, then that amount is taxed as a remittance under Section 4 (1) (b) (iii). If his other income in that year is Rs. 12 lacs, he has to pay tax on Rs. 18 lacs in all. But the rate applicable to this total income of Rs. 18 lacs is the rate applicable to an income of Rs. 12 lacs, being the total minus the remittance. Now, suppose that in 1950 his other income is Rs. 3 lacs only. Then, he pays tax on Rs. 9 lacs (consisting of the remittance and the other income) at the rate applicable to the remittance, that is to say, to Rs. 6 lacs. In this case, this alternative produces the larger tax, because the total income minus the remittance would amount to Rs. 3 lacs only, and the rate thereon would naturally be smaller.

As regards the remittances, the authorities show that if there is a remittance from a foreign branch to a head office in British India, the presumption would be that it is in respect of the foreign profits and it is for the assessee to rebut the presumption and show that it is a remittance of capital and not profits. *A. V. Murugappa Chettiar vs. Commissioner, Madras*¹; *The Scottish Provident Institution vs. Allen*.²

Before we close this subject, I should tell you that under the third proviso to Section 4 (1) an assessee gets a relief in case in any year the amount of income accruing or arising to him outside British India exceeds the amount brought into British India in that year. In such a case, the excess upto a limit of Rs. 4,500/- is not included in the assessment of the income of that year. For example, if the income which accrued to the assessee outside British India during the accounting year was Rs. 10,000, and he brought into British India in the very year Rs. 5,000, out of this sum of Rs. 10,000, Rs. 4,500, shall not be included in the assessee's assessment of the income of that year. If the income

**Relief of
Rs. 4,500/-
for Foreign
Income—
S. 4 (1) Third
Proviso.**

which arose outside British India was Rs. 10,000, and the assessee brings into British India the sum of Rs. 9,000, then Rs. 1,000, is not included in the assessment. If he brings down the whole sum of Rs. 10,000, into British India, then there is no excess and the Third Proviso to Section 4(1) does not apply.

It should be noted that the assessee does not get an exemption of this sum of Rs. 4,500. The words used in the proviso are: "there shall not be included in the assessment of the income of that year so much of such excess, etc." If therefore an assessee earns Rs. 10,000, outside British India during the accounting year and brings down a sum of Rs. 5,000 in the same year and Rs. 4,500 are not included in his income as stated above, and, if, in the next year, he brings down the remaining sum of Rs. 5,000/-, then this last mentioned sum will attract tax under Section 4 (1) (b) (iii), but, as out of this sum Rs. 500 have already been taxed, he will be taxed on Rs. 4,500/- only in respect of the remittance.

4. TAXATION OF PERSONS WHO ARE NOT ORDINARILY RESIDENT

If the assessee is resident, but not ordinarily resident in British India in the accounting year, then he would have to pay tax on the following incomes:—

- (a) Income received or deemed to have been received by him in British India in the accounting year ;
- (b) Income which accrued or arose to him or which is deemed to have accrued or arisen to him in British India in the accounting year ;
- (c) Income which accrued or arose to him outside British India (other than in an Indian State) in the accounting year, provided such income is derived from a business controlled in, or a profession set up in India (that is to say, any part of India and not necessarily British India); and
- (d) Income which accrued or arose to him outside British India during the accounting year or in any previous year subsequent to 1st April 1933, provided such income is brought into or received in British India by the assessee during the accounting year.

The important provision of the Act which governs persons who are not ordinarily resident, is the Second proviso to Section 4 (1). As already stated, a person who is not ordinarily resident is nevertheless resident, and but for the proviso, all the four classes of income in respect whereof a resident has to pay tax as stated above would apply also to a person not ordinarily resident. However, the proviso reduces the liability, in that, such person, is not liable to pay tax on income which accrued outside British India unless it is derived from a business controlled in, or profession or vocation set up in India, or unless it is brought into or received in British India by the assessee during the accounting year. Whether the foreign income is income of the accounting year or is the income of years prior to the accounting year but subsequent to 1st April 1933, the proviso applies, if the income is brought into British India in the accounting year, and the assessee is liable to pay tax on such income. It was so held in the recent case of *Raghunath Madhavlal vs. the Commissioner of Income-Tax, Bombay*.¹

As in the case of ordinary residents, the above four classes of income are actually taxed. Over and above these, income which accrues or arises to the assessee in the accounting year in an Indian State, which is not received or deemed to be received in or brought into British India in the accounting year and is not income which is deemed to have accrued or arisen in British India under S. 42 but which arises from a business controlled in or a profession or vocation set up in any part of India (including an Indian State) is included in the total income of the assessee for rate purposes, but is itself exempt from payment of tax under Section 14 (2) (c). When such income is subsequently brought into British India, the assessee gets the relief under Section 17 (4), as in the case of residents.

5. TAXATION OF NON-RESIDENTS

If the assessee is a non-resident, he pays tax on the following incomes:—

- (a) Income received or deemed to have been received by him in British India in the accounting year.

¹ 13 I. T. R. 376.

- (b) Income which accrued or arose or which is deemed to have accrued or arisen to him in British India in the accounting year.

Section 42 of the Act mentions the cases in which income shall be deemed to accrue or arise within British India. It provides that all income accruing or arising whether directly or indirectly through or from any business connection in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any money lent at interest and brought into British India in cash or in kind, shall be deemed to be income accruing or arising within British India.

Foreign Income Deemed to Accrue Within British India - S. 42.

In one case, a non-Resident company was doing insurance business in British India. The company had its Head Office in England. The premium receipts from the Indian business were sent to the Head Office and remittances were received from England for meeting the claims, etc., as and when the payments fell to be met. It appeared from the facts before the court that the sums which were sent to the Head Office were invested there, and that income accrued thereon. It was held that the interest income had come directly or indirectly through or from a business connection in British India and was liable to British Indian Tax. The Motor Union Insurance Company, Limited *vs.* The Commissioner Bombay¹. Sub-Section 2 of Section 42 provides that if a non-Resident carries on business with a resident and it appears to the I.T.O. that owing to the close connection between the parties the course of business is so arranged that the resident gets no profits or less than the ordinary profits which might be expected to arise in the business than the profits derived therefrom or which may be reasonably deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident. This sub-section applies also to persons not ordinarily resident. For other similar avoidance of income-tax by dealings with non-Residents or persons not ordinarily resident, see Section 44 D of the Act.²

I should also draw your attention to Explanation 3 to Section 4 (1) of the Act. It provides that a dividend paid without British India shall be deemed to be income accruing or arising in British India to the extent to which it has been paid out-of-profits subject to income-tax in British India. In one case, the assessee was a joint-stock company, having its main office in England and registered office outside British India. It held the bulk of its shares partly in some companies called the "Rupee Companies" incorporated in India, and partly in companies called "Sterling Companies" incorporated in England, but which carried on extensive business in British India. These Sterling Companies whose British Indian Profits were assessed to income-tax and super-tax in British India declared their dividends in England, and the assessee company also received the dividends in England. The assessee company was assessed to income-tax and super-tax in British India in respect of the dividends under the Explanation 3 to Section 4 (1). The company contended that the dividends were debts accruing to a non-Resident outside British India and that Section 4 (1) (c) and Explanation 3 were *ultra vires* the Indian Legislature. The Federal Court held that the source of the dividends was in British India and that the company was properly taxed to British Indian Tax. It also held that in making the dividends liable to income-tax and super-tax, the Indian Legislature was not giving its law any extra territorial operation and, even if there was any extra territorial operation in the impugned provisions, it was within the legislative powers given by the Government of India Act 1935—Governor-General in Council *vs.* The Raleigh Investment Company, Limited.¹

The Income-Tax Act divided non-Residents into two groups, namely, (1) a non-Resident who is a British subject, or a subject of an Indian State or Tribal Area or Burma and (2) any other non-Resident. If the assessee belongs to the first group, he pays tax, including super-tax, on the income for which he is liable to pay tax, at the rate applicable to his total world income. All other non-Residents pay income-tax on their total income at the maximum

rate and super-tax at the rate applicable to their total world income—See Section 17 (1) of the Act.

Non-Resident A non-Resident may be taxed either in his own
how Taxed— name or in the name of his agent—See Section 42
S. 42 (1) and
43 (1) of the Act.

Section 43 provides the machinery for the appointment of the Agent. According to this section, an Income-Tax Officer may serve a notice upon a person employed by a non-Resident, or having any business connection with the non-Resident, or through whom he receives any income, profits or gains, of his intention of treating him as the agent of the non-Resident. The person served with the notice is heard by the Income-Tax Officer as to his liability, after which the Income-Tax Officer passes his order. If the Income-Tax Officer treats him as the agent, he will be deemed to be the assessee in respect of the tax payable by his principal. The Agent is entitled to retain out of any moneys payable by him to the non-resident a sum equal to his estimated liability for the tax—See Section 42 (1) Second Proviso.

6. CLASSIFICATION ACCORDING TO STATUS.

Having ascertained whether your client is a resident, a person not ordinarily resident or a non-Resident you have next to consider his status. This is necessary, because assesseees having different status are assessed in different ways. The classification according to status has already been explained to you¹. We proceed to consider the special features relating to the assessment of the different classes of assesseees according to their status.

7. ASSESSMENT OF INDIVIDUALS.

If your client is an individual, he will have to pay tax not only on his own income, but also, in certain cases, on the income of others. Section 16 of the Act mentions the cases in which the individual is liable to pay tax in respect of income which is not his own. They are as follows :—

- (a) In the first instance, if the assessee has made a settlement or other disposition of any property, under which

¹ See page 25 above.

Assets Remain- ing Settlor's Property— the assets remain his property, then the income arising from the property so settled or disposed of will be deemed to be the income of the Settlor or Disposer. This will be so whether the settlement or disposition is revocable or irrevocable;

- S. 16 (1) (c).**
- (b) If an assessee has made a revocable transfer of assets, as, for example, a revocable trust, or in an agreement or arrangement which is revocable, then all income arising under such transfer shall be deemed to be the income of the transferee. The first
- Revocable Settlements —S. 16 (1) (c).** Proviso to Section 16 (1) (c) defines a "revocable settlement, disposition or transfer," and it is provided that, if a deed contains any provision for re-transfer, directly or indirectly, of the income or assets to the settlor, disposer or transferee, or if it in any manner gives the settlor, disposer or transferee a right to re-assume power, directly or indirectly, over the income or assets, then the deed shall be deemed to be revocable.

This Proviso was considered in the case of Keshavlal Poonjaram versus the Commissioner, Bombay¹. In this case, the assessee reserved in the deed of settlement, a limited power of revocation, to the effect that he could revoke the trusts and declare new trusts in respect of the trust property, but that such new trusts could only be made in favour of the assessee's son or any other child. It was held that the Section applied, and the assessee was liable to pay tax on the income of the property settled by the trust. The Learned Chief Justice pointed out that, though the assessee could not, under the deed, directly affect his own income, it was possible that in certain cases, he could, by exercising the power of giving the income to any one person rather than to another, affect the tax to which he is liable under the Act. At any rate, the settlor had, under the limited power of revocation, assumed power which he previously possessed before he made the settlement over the settled assets.

In another Bombay case—*Ramji Keshavji vs. the Commissioner Bombay*,¹ the assessee executed a Deed of Trust, under which the income was to go to his wife during her life time, and, in the event of the assessee surviving the wife, the income was to be paid to him, the assessee, so that the assessee had a contingent claim over the income. Kania J. was of the opinion that the First Proviso to Section 16 (1) (c) did not cover the case of a contingent claim. Chagla J. was, however, of the opinion that the words of the Proviso were wide enough to cover even a provision for re-transfer which is contingent in its nature. The case was, however, actually decided on the third Proviso to Section 16 (1) (c) to which I shall refer immediately.

To the above rule, viz., that the income arising under a revocable settlement is taxable in the hands of the settlor, there is an exception. If the settlement is not revocable for a period exceeding six years, or if it is not revocable during the life time of the beneficiary who is entitled to the income in S. 16 (1) (c) of the relevant year, and if the settlor derives no direct or indirect benefit from the income, then Section 16 (1) (c) does not apply, and the income is not considered to be the income of the settlor. Accordingly, it is usual for the settlor, who wants to avoid payment of tax in respect of income of property which he has settled, to make a deed poll to the effect that the trust deed shall not be revocable for a period of six years and fifteen days or a month or other short period over six years.

In the case of *Ramji Keshavji* referred to above, the deed of settlement contained no power of revocation. It was, therefore, clear that during the life time of the wife, the settlor could not revoke the trusts, and, as in the year in question the income was payable to the wife, the exception applied, and it was held that

the income could not be taxed in the hands of the husband under Section 16 (1) (c).

Income of Assessee's Wife or Minor Child Deemed Assessee's Income—S. 16 (3). (c) The income of a wife or minor child of the assessee is deemed to be the assessee's income under Section 16(3) in the following cases. *viz.* :—

- (i) If the wife or minor child is a partner in a firm in which the assessee is himself a partner ;
- (ii) If such income is derived from property which has been transferred to the wife or minor child (other than a married daughter) by the assessee without consideration ; and
- (iii) If such income is derived from a trust or other disposition made without consideration for the benefit of the wife or of the minor child, or both.

When any part of the income of another party, which is added to the assessee's own income as aforesaid, is "earned income" the assessee gets the benefit of the allowance in respect of such "earned income".

8. ASSESSMENT OF HINDU UNDIVIDED FAMILIES.

A Hindu undivided family is taxed as a unit. If, therefore, a member of the family receives any income as such member he cannot be made to pay tax in respect thereof over again and Section 14 (1) provides that an assessee shall not be liable to pay tax in respect of any sum which he receives as a member of a Hindu undivided family. A Hindu widow getting a maintenance allowance is not liable to pay tax on the allowance. The Section has been amended in 1944, and the words "Where such sum has been paid out of the income of the family" have been added at the end of the sub-section. Consequently, now an assessee who claims exemption under the sub-section must show that the amount received by him formed a part of the income of the family.

Section 16 (3) referred to by me in connection with transfers in favour of the wife or minor children is applicable to individuals

Gifts By Hindu Father of Ancestral Moveables. only. You are aware that a Hindu father is entitled to make gifts of ancestral moveable property within reasonable limits, without the consent of his sons, for the purpose of performing indispensable acts of duty, and for the purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress, and so forth.¹ Such gifts of affection may be made to a wife, or a daughter, or even to a son. If it is made, the same does not attract the provisions of Section 16 (3), and the income is taxable only in the hands of the donee.

As regards Life Insurance, I have already told you² that a Hindu undivided family is entitled to exemption in respect of **Life Insurance Premiums—** premiums upto the limit of Rs. 12,000 (as against **S. 15 (3).** Rs. 6,000 in the case of individuals), provided that not more than one-sixth of the total income of the family is exempt.—See Section 15 (3).

When it is brought to the notice of the Income-Tax Officer that a partition has taken place amongst the members of a Hindu Undivided Family, a special procedure is observed under Section 25-A of the Act. The Income-Tax Officer has, in such cases, to make an enquiry into the matter and satisfy himself that the joint family property has been partitioned among the various members or groups of members in definite portions. It has been held in the case of Gordhandas T. Mangaldas *versus* the Commissioner, Bombay³ that the words “in definite portions” imply that the partition should be by metes and bounds, and not a mere notional partition or separation under the Hindu Law. If the Income-Tax Officer is satisfied about the partition, he passes an order to that effect under the section. Note that the Section only applies and the order can be made by the Income-Tax Officer only if in prior years the family was assessed as undivided. On the order being passed by the Income-Tax Officer, he makes an assessment of the total income of the joint family as if no partition had taken place and then each member or group of members pays a share of the tax on the income so assessed according to the

1 Mitakshara Ch. I S. 1 Paragraph 27.

2 See Page 22 above.

3 11 I. T. R. 183.

portion of the joint family property allotted to him or it. If the Income-Tax Officer refuses to pass the order, the family shall be deemed for the purposes of the Income-Tax Act, to continue as a Hindu Undivided Family.

The Section does not apply if only a partial partition of the joint family assets takes place. It was so held by the Privy Council in the case of *Sundersingh Majithia vs. the Commissioner, C. P. and U. P.*¹ The Privy Council observed that in such a case all that happens is that the family parts with an item of its property to its individual members, but continues in existence as a joint family. That being so, Section 25-A does not apply to the case.

This position was amplified in the case of *Waman Satwappa versus the Commissioner, Bombay*,² and it was held that, even if a joint family disrupts by a notional partition and thereafter some of the assets of the family are divided by metes and bounds, and others remain undivided, tax can be recovered from the respective members individually in respect of the assets which are divided and become the individual property of the members, and the joint family will be taxed only in respect of the assets which have remained undivided.

9. ASSESSMENT OF COMPANIES

A company is a unit for the purposes of the Income-Tax Act. It is, however, clear that it acts on behalf of its members or shareholders, and the Act has therefore made certain provisions with a view to avoid the tax in respect of the companies profits being levied both on the company and its share-holders. Hence Section 49-B of the Act provides that where any dividend has been paid, credited or distributed by a company which is assessed to income-tax in British India or elsewhere to its shareholder, such shareholder shall be deemed to have paid income-tax (but not super-tax), in respect of the dividend. Under Section 20, the principal officer of the company has to give a certificate to the shareholder to the effect that the company has paid or will pay income-tax on the profits which are being distributed. The

**Company Pays
Tax On Behalf
of Share-
holders—
S. 49 B.**

1 10 I. T. R. 457.

2 Unreported : I.T. Reference No. 2 of 1945.

provision mentioned above applies only to income-tax. As regards the super-tax, the company pays the same on the profits at the rate mentioned in the Finance Act, the rate being generally smaller than that applicable to individuals. The shareholder also pays super-tax on his total income including any amount which he may have received by way of dividend.

Now, it is possible that the company may not be liable to pay income-tax on its whole income, because a part of the income may, for example, consist of tax-free securities. The Department, therefore, ascertains the fraction of the whole income of the company which is liable to pay income-tax, and the shareholder is deemed to have paid income-tax on that fraction of the dividend. If, for example, the total income of the Company is Rs. 10 lacs, of which Rs. 2 lacs are derived from interest on tax-free securities, the company is liable to pay tax on four-fifths of its whole income. The dividend paid to the share-holders would include not only the profits of the company made by its ordinary activities, but also the interest on the securities. The section, therefore, enacts that the share-holder would in a case like the above be deemed to have paid income-tax on four-fifths of the dividend.

Income-tax is paid by a company at the maximum rate under the Finance Act of each year. Section 49 B, therefore, enacts that the share holder shall be deemed to have paid income-tax at such maximum rate to which the company was liable in the Financial Year in which the dividend was paid, credited or distributed.

Under Section 16 (2) any dividend paid to an assessee shall be deemed to be the income of the accounting year in which it is paid, credited or distributed to him. Under the same section, the dividend has "to be grossed." To understand this expression I should remind you of what I told you at the end of my first lecture regarding the additions made to the income for rate purposes. As I then told you, the Act allows certain deductions to be made from the income, so that the amount of the deductions does not bear tax, but the amounts are added back for rate pur-

Grossing of Dividends and Refunds — S. 16 (2) and S. 18 (5).

poses. The same thing is done in connection with the dividends. The dividend which a shareholder receives is what he gets after the company has paid tax thereon on his behalf. As the scheme of the Act is to see that tax is payable on the gross income of an assessee and not the income which remains in his hands after payment of the tax, the amount of the dividend which the assessee receives from the company is subject to the increase by adding thereto the tax which the company has paid thereon. This is what is known as grossing the dividend. Section 16 (2) provides that the dividend shall be increased to such amount as would, if the income tax at the maximum rate applicable to the company for the financial year in which the dividend was paid, were deducted therefrom, be equal to the amount of the dividend. Suppose, your client is a share-holder of a company which declared and paid in June 1942 a dividend of Rs. 50/- per share, and suppose your client held one share of the company. The maximum rate at which companies were liable to pay tax for the financial year 1942-43 was 3 annas 9 pies in the rupee including surcharge. Your client will, therefore, be deemed to have paid tax in respect of the dividend at 3 annas 9 pies in the rupee under Section 49-B. The dividend of Rs. 50/- is, of course, the net dividend and tax has to be paid on the gross dividend. The sum of Rs. 50/- will, therefore, have to be increased by the tax on the gross dividend. The Income-Tax Officer will find the figure of the gross dividend, which will be an amount larger than the net dividend of Rs. 50/- by the tax on the gross dividend at 3 annas 9 pies in the rupee. Your client will thus have paid tax on the gross dividend at 3 annas 9 pies in the rupee, but for the inclusion in his total income for rate purposes, the gross dividend and not the net dividend will be added. To take a round figure: Supposing the gross dividend so ascertained is Rs. 65/- and the Income-Tax Officer has ascertained that tax on Rs. 65/- at 3 annas 9 pies is Rs. 15/-, so that Rs. 50/- is the net dividend and Rs. 15/- is the amount of the grossing up, representing the tax on the gross dividend of Rs. 65/-. Your client will under Section 18 (5) be treated as having paid Rs. 15/- on account of the tax payable by him. If your client is a poor man and his whole total income including the sum of Rs. 65/- included in his income as afore-

said is less than Rs. 2,000/-, he has to pay no tax. As he has already paid Rs. 15/- on account of tax, the amount is refunded to him. Thus Section 16 (2) and 18 (5) automatically work out the refund payable to the assessee.

I have already told you that if the Company pays tax not on its whole income, but only on a part of its income, because the remaining income is not liable to tax, the shareholder will be deemed to have paid tax on the fraction of the dividend bearing the same proportion to the whole dividend as the part of the Company's income liable to tax bears to the whole income. It, therefore, follows that the grossing up under Section 16 (2) could only be on such part of the dividend which has borne tax. If, in the case mentioned above, one half of the company's profits were derived from tax-free securities, your client would be deemed to have paid tax on Rs. 25/- only, and the grossing up would be on Rs. 25/- and not on Rs. 50/-, so that, if the amount grossed up comes, for example, to Rs. 7-8-0, your client will get a refund of Rs. 7-8-0 only, and not Rs. 15/- under Section 18 (5).

The word dividend has not only its commercial meaning for the purposes of the Income-Tax Act, but it also includes certain

**Meaning of
Dividend—
S. 2 (6A).**

other distributions by the company which are mentioned in Section 2 (6A) of the Act. They are:

- (a) Any distribution of accumulated profits whether capitalised or not, if such distribution entails a release of assets by the company to its shareholders;
- (b) Any distribution by a company of debentures to the extent to which the company possesses accumulated profits whether capitalised or not;
- (c) Any distribution made to the shareholders on the liquidation of the company out of accumulated profits which arose during the six years preceding the date of liquidation; and
- (d) Any distribution on the reduction of the capital to the extent to which the company possesses accumulated profits which arose after the accounting year for the assessment year 1933-34, whether such profits have been capitalised or not.

If the distribution is in respect of any share issued for full cash consideration which is not entitled to participate in the surplus assets on liquidation, then such distribution will not be deemed to be a dividend for the purpose of (c) or (d) above.

Private Limited Companies sometimes do not declare a dividend, but accumulate reserves for the purpose of avoiding super-tax which would be otherwise payable by the share-holders in the dividends with a view to meet this contingency, Section 23-A of the Act provides that, if the Income-Tax Officer is satisfied that within six months of the meeting in which the accounts of the company have been laid before it, a dividend of 60 per cent. or more of the assessable income of the company is not distributed, he shall pass an order with the previous approval of the Inspecting Assistant Commissioner that the undistributed portion of the assessable income of the company shall be deemed to have been distributed as dividend amongst the shareholders. The assessable income reduced by the income-tax and super-tax payable by the company thereon is considered for ascertaining the 60 per cent. thereof as aforesaid. The Income-Tax Officer is given liberty not to proceed under the section if he is satisfied that the smaller dividend was declared having regard to losses incurred by the company in earlier years or to the smallness of the profits made in the year. If the company has vast reserves of accumulated profits which exceed the paid-up capital of the company, then a distribution of 100 per cent. instead of 60 per cent. is deemed to be made under the section. The Section applies only to companies in which the public are not substantially interested as defined in the section. This section has been suspended of late, as a part of the anti-inflation drive, which is the policy of the Government. See Section 6 (8) of the Finance Act 1944.

Managing Agents of Companies very often share their commission with an outsider either in consideration of financial help or for some other adequate consideration. A difficult question arose in several cases as to whether the amount so paid out of the commission could be considered to be an expense in the hands

**Power to
Income-Tax
Officer to
assess undi-
stributed pro-
fits of private
Companies.
S. 23A**

**Sharing of
Managing
Agency Com-
mission. S.
12- A.**

of the Managing Agents, so that they could be liable to pay tax only on the balance, or whether the division of the commission was only a sharing of the profits, so that the Managing Agents could be charged to tax on the whole profits. In order to avoid hardship, a new Section 12-A. was added by the Amending Act of 1939 and now the parties are bound to pay tax only on the share of the commission received by each, provided that the sharing of the commission is for adequate consideration and provided further a declaration is filed by the Managing Agents and the parties who share the commission, showing the proportion in which the commission is shared between them.

As regards insurance, companies the profits are calculated in a special way as mentioned in the Schedule to the Act. This is done under Section 10 (7) of the Act. An Insurance Company's Profits arise partly out of its investments and partly out of the dealings with the premiums. The premiums themselves cannot be considered to be profits, because they would have to be paid out again to the policy-holders on the maturity of the policies. The schedule to the Act, therefore, provides a special machinery for the computation of the profits of insurance companies.

So far as Life Insurance Business is concerned, the Income-Tax Officer has to calculate profits in two ways mentioned below, and find out which of them results in a figure of larger profits, and he taxes the company on the larger amount. The two methods are as follows:—

Life Insurance Business.

- (a) The Income-Tax Officer ascertains the gross external incomings consisting of interest, dividends, fines, fees and all other moneys received by the Company other than premiums. Out of this, the Officer deducts Management Expenses including commissions. Bonuses and other sums paid to or reserved on behalf of the policy-holders are not included in the management expenses. The amount to be allowed as management expenses shall not exceed in all a percentage of the premium as mentioned in Rule 2 of the Schedule. The balance is considered to be the profits of the company for the year.

(b) In calculating the profits according to the second method, the actuarial valuation is taken into consideration. The annual average of the surplus arrived at by such valuation is first ascertained, but in so ascertaining the average, the following items are to be excluded, namely:—

- (1) Any amount brought forward from the previous net valuation period, so that the surplus may be restricted to the actual net valuation brought under consideration, and
- (2) Any expenditure which is not allowed as a business expenditure under Section 10 of the Act.

So that, to start with, we have to arrive at the average by taking the actual surplus, and deduct from it any amount which may have been brought forward from the previous net valuation period, and add to it all disallowables under Section 10 as if Section 10 applied to the case. After ascertaining the average surplus in this manner, certain further deductions are to be made, *viz.* :—

- (1) One half of the bonus paid to or reserved for the Policy-Holders;
- (2) Any amount written off or reserved to meet depreciation as mentioned in the Rules; and
- (3) The amount of interest received in respect of tax-free securities of the Central Government.

The balance is the profit of the company according to the second method.

The profits and gains of a business of insurance other than Life Insurance is taken to be the balance of the profits disclosed **Insurance other than Life Insurance** by the annual accounts, copies of which are required to be furnished to the Superintendent of Insurance under the Insurance Act of 1938, after adjusting such balance so as to exclude from it any expenditure under Section 10 of the Act. (See Rule 6 of the Schedule).

Rule 8 of the Schedule provides that, in the absence of more reliable data, the profits of the British Indian Branches of a Foreign Insurance Company shall be calculated by considering the proportion of the total world income of the company corresponding to the proportion which the British Indian Premium income bears to the total World Premium income of the company.

10. ASSESSMENT OF LOCAL AUTHORITIES.

The income of a local authority, e.g. Municipality, is exempt from tax, except in so far as such authority carries on a trade or business other than that of supplying a commodity or service within its own jurisdiction. If such local authority carries on any other trade or business, the profits thereof will be liable to tax.

Section 4
(3) (iii)

11. ASSESSMENT OF FIRMS.

A firm like a company is a unit chargeable to tax under Section 3 of the Act. In order, however, that a firm and its partners may not be taxed in respect of the same profits, certain provisions are made in the Act. Under Section 26-A of the Act, an application may be made to the Income-Tax Officer on behalf of a firm for the registration of the firm. The Partnership Deed will have to be produced before the Income-Tax Officer and the individual shares of the partners will have to be intimated. If the Income-Tax Officer is satisfied that there is a firm in existence constituted as shown in the Partnership Deed and that the application has been properly made, he shall enter a certificate at the foot of the Deed as follows :—

**Registered
and Unregis-
tered Firms.**

“ This instrument of Partnership has this day been registered with me the Income-Tax Officer for in the Province of under Section 26-A of the Indian Income-Tax Act 1922 and this Certificate of Registration shall have effect for the assessment for the year ending 31st day of March 19 ”—(See Rule 4 of the Income-Tax Rules).

If the Income-Tax Officer is not so satisfied, he will pass an order refusing to register the firm. The certificate of registration may be renewed year after year under Rule 6 of the Income-Tax Rules.

You have noticed that under Rule 4 the Income-Tax Officer should be satisfied that the firm was in existence, constituted as shown in the Partnership Deed. In other words, there must be a genuine firm.

In one case,—in re: The Central Talkies Circuit, Matunga¹ the partnership included in 1937 the wife and minor son of a partner and they held three anna and two anna shares respectively in the firm. In 1937 Section 16 (3) was amended, so that the share of the profits coming to the wife and minor son of the partner became liable to be included in the partner's income. The partners thereupon re-shuffled their shares and instead of the wife and the minor son being partners, the mother of the partner was taken as a partner and she was given the share of $4\frac{1}{2}$ annas. It was ascertained that there was no necessity for introducing any new financing partner and that, in fact, the mother had no capital or finance to bring in. The mother also did not know anything about the business and did not assist in the conduct of the business in any way. The Department came to the conclusion that the mother was a mere nominee of the partner. It was held that as one of the partners was only a nominee for another partner, the Deed did not specify correctly the individual shares and that the partnership was not genuine.

In case the firm is registered, the Income-Tax Officer ascertains the profits of the firm, but does not determine the tax payable thereon. Instead, each partner of the firm is assessed on his share of the profits and such share is included in his total income. If such a share is a loss, it can be set off against the partner's other income or carried forward and set off in accordance with the provisions of Section 24.

If a partner receives any interest, salary, commission or other remuneration, the same is not considered as an

Salary, &c., received by partner—S. 16 (1) (b) and S. 10 (4) (b). expense of the firm—See Section 10 (4) (b). The result is that for the purpose of ascertaining the profits of the firm, all such amounts are added back. So far as the allocation of profits between the partners is concerned, the share of the partner who receives such salary, interest, commission, or other remuneration shall be deemed to be not only his share in the profits, but also such salary, interest or remuneration paid to him. However, the share of profits calculated for the purpose is the actual share received by him. This is under Section 16 (1) (b) of the Act. If, for example, the firm's profits according to its Profit and Loss Account is Rs. 15,000/- and there are three partners in the firm, two of whom receive their nominal shares and the third receives in addition to his share, a salary of Rs. 3,000/- per year, the Income-Tax Officer will consider the profits of the firm to be Rs. 18,000/- under Section 10 (4) (b). Each of the partners who did not receive the salary will be taxed on the share of Rs. 5,000/- and the partner who receives the salary will be taxed on Rs. 8,000/-.

In the case of Unregistered Firms, the firm itself is taxed as a unit, and naturally the partner does not pay tax over again on his share of the profits. This is provided by **Unregistered Firms.** Section 14 (2) (a). However, his share is added to his other income for rate purposes under Section 16 (1) (a). The inclusion is made in respect of Income-Tax only. The share is not added for the purposes of Super-Tax, if the firm has paid Super-Tax on its whole income. This is under the Second Proviso to Section 55 which deals with Super-Tax.

It sometimes happens that it is more profitable for an assessee to allow his firm to remain unregistered than to get it registered under Section 26-A. As the Revenue is likely to suffer by such a procedure, it is provided in Section 23 (5) (b) that the Income-Tax Officer may, instead of assessing the unregistered firm, proceed in the manner laid down in the section for assessment of registered firms, if, in his opinion, the total amount of the tax including the super-tax payable by the partners under such procedure would be greater than the total amount which would be

payable by the firm and the partners individually if the firm was assessed as an unregistered firm.

Where, at the time of making an assessment, it is found that a change has occurred in the constitution of a firm or that the firm has been newly constituted, the assessment will be made on the firm as constituted at the time of making the assessment. However, for the purpose of inclusion in the total income of the partners, the shares actually received by the respective partners will be taxed in their hands.

**Change in
Constitution—
—S. 26 (1)**

Similarly where a firm is succeeded by another firm, *e.g.*, by the latter taking over the business of the former firm, each of the partners of the two firms will be assessed in respect of the actual share received by him in the previous year.

**Succession—
S. 26 (2)**

This is the present law. The law prior to 1939 was different. According to the earlier law, the firm which was carrying on the business at the time of the assessment was charged to tax not only on the profits made by that firm, but also for the profits made by its predecessor in the year of account.

If a firm discontinues its business or is succeeded in the business by another party, then if the firm was paying tax under the Income-Tax Act of 1918, it gets a certain relief. This matter is discussed further in greater detail in Lecture III under the head "Discontinuance".

12. ASSESSMENT OF ASSOCIATION OF PERSONS.

The expression "Association of persons" has not been defined in the Act. The words have, however, been construed in a Bombay case, namely, *The Commissioner, Bombay versus Laxmidas*¹. It was held in that case that the expression should be construed in its plain, ordinary meaning and that association of two or more persons, who had combined together for acquisition of properties which were to be managed for the purpose of producing income, profits or gains, fell within the expression. That case was decided before the introduction of Sub-Section 3 in Section 9, under which when

**Meaning of
Association of
Persons.**

¹ 5 I. T. R. 584.

an immoveable property is owned by two or more persons having different shares, each of them is liable to pay tax on his share.

An association of persons is taxed in the same manner as an unregistered firm. The association is taxed as a unit. Each member of the association does not pay tax on his share of the income. But the share is added to his other income for rate purposes.—See Section 14 (2) (b) and Section 16 (1) (a). As in the case of unregistered firm, the inclusion is for income-tax only and not super-tax if the association has paid Super-Tax on its income—See Second Proviso to Section 55.

13. ASSESSMENT OF EXECUTORS AND ADMINISTRATORS.

If a person dies, his executor, administrator or other legal representative becomes liable to pay tax out of his estate to the extent the deceased would have been liable to pay the same. The Notice calling for the Return may be served on such legal representative. If the Notice has already been served on the deceased, legal representatives must complete the assessment proceedings.

**Taxation of
Legal
Representa-
tives—Section
24 B.**

14. ASSESSMENT OF TRUSTEES

In the case of a trust, the Department is entitled to tax either the Trustee or the beneficiary. The Trustee is liable to pay the tax in the like manner and to the same amount as would be leviable upon the beneficiary.—See Section 41(1). The same provisions apply to Courts of Wards, Administrators General and Receivers and Managers appointed by Courts.

If under a Trust Deed (1) the income of the Trust Property is not specifically receivable on behalf of any one person or (2) the individual shares of the beneficiaries are indeterminate or unknown, tax is leviable at the maximum rate applicable to income of companies.—See First Proviso to Section 41(1). In such a case, the assessee cannot take advantage of the slab system, so that even if the annual income is Rs. 1,000, tax is levied thereon at the maximum rate.

**Maximum
Rate—S. 41(1)
first proviso**

A Trust Deed may provide that the income shall be accumulated for a number of years and that at the end of the period such income shall go to a specified person, who takes a vested interest

therein. In such a case, the proviso does [not apply, because the income is specifically receivable on behalf of the beneficiary. If, however, the income is to be accumulated for a period and, at the end of the period, the accumulations are to be added to the corpus and the provisions of the Deed are such that the corpus goes to one beneficiary under certain conditions and to another beneficiary under other conditions, then the income cannot be considered to be specifically receivable on behalf of any one person and the proviso applies: See *Yakub Versey Laljee versus The Commissioner, Bombay*.¹

Again, a Trust Deed may provide that the income of the trust property shall be divided between the beneficiaries in such manner from time to time as the Trustees direct. In such a case, the individual shares of the beneficiaries are indeterminate and the proviso again applies.

It sometimes happens that a Settlor makes a Deed of Trust ostensibly for charity, but the Court holds that the Deed is not entitled to exemption under Section 4(3) (i). If as a result of such decision, the trust property reverts to the Settlor, the maximum rate does not apply. If, however, some of the beneficiaries are still entitled to take under the provisions of the Trust Deed, *e.g.* when a Trust is made for the benefit of poor relations, and it is not possible for the court to determine which particular beneficiaries are entitled to the income, and in what particular shares, then, again, the proviso applies. *D. V. Aroor versus The Commissioner, Bombay*.²

15. ASSESSMENT OF MINORS AND LUNATICS.

In the case of minors and lunatics, tax shall be levied upon the Guardian or Trustee in like manner and to the same amount as it would be leviable upon the minor or the lunatic.—See Section 40(1).

16. ASSESSMENT OF DOMINION GOVERNMENTS AND INDIAN STATES.

If a Dominion Government or an Indian State carries on a business and receives income in connection therewith, which is received or arises or accrued or is deemed to be received or to have

1 Not reported: I. T. Reference 1 of 1944. 2 13 I.T.R. 465.

accrued or arisen in British India then it becomes liable to tax as if it were a company. This is under the provisions of the Government Trading Taxation Act 1926. The business need not be carried on in British India. The tax becomes payable even if the business is done outside British India, but the income accrues arises or is received in British India: *The Patiala State Bank versus The Commissioner, Bombay*.¹

17. SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX.

Chapter V-B was inserted by the Amending Act of 1939, to provide for certain cases in which income would otherwise escape taxation. We have already considered one such case under Section 42 (2), which provides that if a non-resident carries on business with a resident in such a way that the resident gets no profits, but the non-resident gets the same, then the profits shall be deemed to be the profits of the resident.²

Section 44-D provides against another method of avoidance of tax. If a person transfers property to a non-resident, or a person resident but not ordinarily resident, then it is clear that the income of such property would not under the ordinary provisions of the Act be liable to tax in all cases. For example, if the income is not brought into British India, tax could not be levied thereon except in special cases. We have already considered this while dealing with the liability to tax of non-residents and persons not ordinarily resident. However, if, in such a case, the transferor has power to enjoy the income as mentioned below, then the income will be deemed to be the income of the transferor.

A transferor shall be deemed to have power to enjoy the income in the following cases, *viz.* (1) if the income is dealt with by any person in such a way as to be calculated to enure for the benefit of the transferor whether in the form of income or not; (2) if the receipt or the accrual of the income operates to increase the value to the transferor of any other property held by him or for his benefit; (3) if the transferor receives or is entitled to receive any benefit out of the income of the property so transferred by

1 11 I. T. R. 617.

2 See Page 34 *supra*.

reason of the effect of associated operations on the income; (4) if the transferor has the power to receive the beneficial enjoyment of the income, by the exercise of a power of appointment or power of revocation or otherwise; or (5) if the transferor is able to control the application of the income directly or indirectly.

Regard is to be had to the substantial result and effect of the transfer and any associated operations.

Similarly, if the transferor is entitled in such a case to receive any sum by way of loan or re-payment of a loan or any other sum not payable for full consideration, which is payable otherwise than as income, then also the income which accrues to the non-resident or the person not ordinarily resident shall be deemed to be the income of the transferor.

The transferor will not become liable as aforesaid, if he satisfies the Income-Tax Officer—the burden of proof being upon him—that he did not effect the transfer or the associated operations for avoiding liability to taxation, or that the transfer and operations were *bona fide* commercial transactions not designed for the purpose of avoiding liability to taxation.'

Of course, as such income is deemed to be the income of the transferor and he pays tax, therein he does not become liable to pay tax over again when he subsequently receives the income.

I have already told you in Lecture I, that Income-Tax is payable in respect of interest on Government Securities by the

Avoidance of Tax by certain transactions in Securities—S. 44E. person who is entitled to receive the interest.¹—You are also aware that if shares are transferred shortly before the declaration of the dividend, the dividend is received only by the person who actually holds the shares at the time of the declaration of the dividend, and such person pays tax on the dividend, and the person from whom he purchased the shares gets the benefit only in the shape of an increased price for the shares.

A multi-millionaire may avoid payment of super-tax by thus transferring shares or securities shortly before the time for the payment of the dividend or interest, and, at the same time, agree-

1 See *supra* P. 7.



ing to buy back or re-acquire the shares or securities. Section 44E, therefore, provides that in such a case the interest or dividend shall be deemed to be the income of the vendor. The section will apply even if he buys back or re-acquires similar securities as defined in the section.

An assessee may also avoid tax by sale of shares or securities without entering into an agreement at the same time to buy back the same or similar securities. He might systematically sell, purchase or otherwise deal in shares, dividends, and thus avoid tax. Section 44 F deals with the case of such an assessee, and if the Income-Tax Officer is satisfied that the assessee is thus avoiding tax, he can treat the income of the shares and securities of such assessee to accrue from day to day, so that he becomes liable to pay tax on the proportionate amount of the interest or dividend, even though he does not actually receive the same.

**Avoidance of
Tax by sales
cum dividend**

—S. 44F.

LECTURE III

CALCULATION AND PROCEDURE

[Ss. 2 (11) - 5 - 5A - 13 - 22 - 23 - 25 - 27 - 30 - 31 - 33 - 33A - 34 - 35 - 37 - 61 - 64 - 66 - 66A].

1. THE "PREVIOUS YEAR"

Income-Tax is levied and recovered in advance for the current financial year beginning from the 1st April and ending on 31st March. The tax is, however, levied on the income of the "Previous Year" under the provisions of the charging section, *viz.* Section 3. Therefore, for ascertaining what tax an assessee must pay say for the assessment year 1944-45, we must enquire what his income in the "previous year" or the accounting year was. The expression "the previous year" has been defined in Section 2 (11). It is not the same for all the assessee's, but they are given an option to choose their own accounting year provided that such year ends within the twelve months prior to the commencement of the financial year. For example; an assessee may keep his accounts according to the calendar year, in which case, the previous year for 1944-45 would be the calendar year 1943. Again, if the accounts are kept according to the Samvat Year, then the previous year for 1944-45 would be Samvat Year 1999, starting on 9th November 1942 and ending on 29th October 1943. If an assessee does not keep his accounts so that they end on any day other than the 31st March, then his previous year will end on 31st March, that is to say, one day before the commencement of the assessment year.

Once an assessee selects his previous year, he will not be entitled to vary the same, except with the consent of the Income-Tax Officer, and upon such conditions as that Officer may think fit.

If the assessee is a partner in a firm, the previous year in respect of his share of the profits of the firm will be the same as that for the assessment of the firm. If, therefore, an assessee keeps his personal accounts according to the calendar year, but the firm in which he is a partner keeps its accounts according to the finan-

cial year, then he will be assessed for his share of the profits of the firm for the financial year and, for his other income, which he received in the calendar year. It is clear that to do otherwise would lead to confusion.

The system of charging tax according to the income of the previous year was not in existence under the old Act of 1918. Under that Act, if the income tax was to be levied, as, for example, in respect of the year 1916-17, then the income of that very year was ascertained, and tax was levied thereon. However, as it was impossible to ascertain in advance the income for the assessment, a provisional assessment was made and the assessment was subsequently revised when the actual income was ascertained. This method was not found satisfactory either from the point of view of the assessee or from the point of view of the Department, and so, when the Act of 1922 came into force, the present system was adopted.

Note that under the present system, it is the actual income of the previous year that is taxed and not what would have been the income of the previous year, if the facts had been as they existed in the assessment year. It was so decided in the case of *Rawji Dhanji & Co.*¹ In that case, a man who was carrying on business in British India and Burmah was assessed for the assessment year 1937-38. His previous year ended on 14th November 1936, being very likely a Samvat Year. During the accounting year, Burmah was a part of British India, but in the assessment year Burmah ceased to be a part of British India. The assessee made a profit in Bombay, but incurred a loss in his business in Burmah in the accounting year, and he wanted to set off his loss against the profits of the Bombay business. It was held that he was entitled to do so, as in the accounting year Burmah was a part of British India.

Although the facts have to be ascertained as existing in the accounting year, the law which is to be applied is the law of the assessment year. This was explained in the matter of the *Trusts of Sir Cowasjee Jehangir, Baronet.*² In that case, the assessee created in 1936 a Deed of Trust. Shortly before Section

1 8 I.T.R. 1. 2 Not reported I.T. Reference No. 19 of 1943.

16 was amended by the Amending Act of 1939, he executed a Deed Poll, making the Trust irrevocable for a period of six years and fifteen days. The question was whether the assessee was entitled to the benefit of the Third Proviso to Section 16 (1) (c). It was held that he was not, because in the accounting year the trust was revocable. At the same time, the law to be applied was the law as amended by the Act of 1939, as the assessment year in question was 1939-40. The result was that the income was deemed to be the income of the assessee under the provisions of Section 16 (1) (c).

Another case in which it was held that the law of the assessment year is to be considered is the case of the Commissioner, Bombay *versus* The Sindh Hindu Provident Fund Society¹.

2. DISCONTINUANCE.

I have just explained to you, how, under the Act of 1918, a provisional assessment was made in respect of the income of the assessment year and the assessment was subsequently adjusted when the income was actually ascertained.

When this system was abolished by the Act of 1922, those who were assessed under the Act of 1918, paid tax twice for one year. They paid tax for 1921-22 under the old Act according to the old system, and they again paid tax on the same income for the assessment year 1922-23, as the income became the income of the previous year. In order to give relief to such assessee, Section 25 (3) was introduced by the Act of 1922. Under this sub-section, when such an assessee who has paid tax under the Act of 1918, discontinues his business, he gets the following reliefs, namely:—

- (1) He does not pay any tax for the period between the end of the previous year and the date of the discontinuance of the business; and
- (2) He is entitled to claim that the income of the previous year shall be deemed to be the income of the period mentioned in (1) above.

For example: If a solicitor who was in the profession in 1921 and had paid tax in that year, retires on 30th April 1943, and

if his accounting year has been the financial year starting on 1st April and ending on 31st March, then he becomes entitled to the two reliefs mentioned above in the following manner. Supposing that his income for the month of April 1943 is Rs. 1,500, he pays no tax thereon, as it represents the profits between the end of the previous year and the date of discontinuance. Further, he can also claim that the income for the accounting year 1942-43 was the sum of Rs. 1,500 only.

Several cases have been decided by our High Courts which have been confirmed in the recent Privy Council Case of Commissioner, Bombay *versus* P. E. Polson,¹ to the effect that the word "Discontinued" in Section 25(3) has its ordinary meaning of total cessation of business. For example: Where a company goes into liquidation and its assets are sold to a new Company who continues the business, then, there is no discontinuance and Section 25(3) does not apply. So also, if a person who was carrying on a business in a commodity, converts his undertaking into a limited liability company, there is no discontinuance. These are cases of succession.

Under the Act as it stood prior to 1939, the person who actually carried on the business at the date of the assessment of the business was assessed to tax in respect of the profits of the business, even though he had succeeded to the business and had not received the profits of the previous year. This was under the old Section 26 (2). The Act of 1939 altered this law, and now, if a succession takes place in a business, then the predecessor and the successor are each assessed to tax in respect of the actual profits earned by them. In view of this change in the law, it was felt that the relief under Section 25 (3) should be given to the person who has been succeeded in the business and not to the successor when he ultimately winds up the business. A new sub-section, 4, has, therefore, been introduced in Section 25 by the Amending Act of 1939, so that the present law is that, if a person who has paid tax under the Act of 1918, is succeeded by another person, (the change not being merely a change in the constitution of a partnership), the predecessor, that is to say, the man who has been succeeded in the business, gets the relief mentioned in Section 25 (3).

Of course, if in such a case, the business is ultimately wound up and totally discontinued, the successor does not get any further benefit. It is so provided by the introduction of the words "then, unless there has been a succession, by virtue of which the provisions of sub-section (4) have been rendered applicable," in Section 25 (3).

The relief mentioned above is in respect of income-tax only and not super-tax, unless the profits of the business were assessed to super-tax for the first time either for 1920-21 or for 1921-22.

The relief No. 2 at page 59 must be asked for before the expiry of one year from the date of discontinuance or succession as the case may be—*See* Section 25 (5).

3. METHOD OF ACCOUNTING.

Section 13 of Act provides that for purpose of Sections 10 and 12 of the Act, (that is to say, ascertaining the income, profits and gains of a business, profession or vocation or income from sources other than those mentioned in Sections 7 to 10), the income shall be computed in accordance with the method of accounting regularly employed by the assessee. The Privy Council was held that the method of amounting mentioned in the section relates to the method adopted by the assessee for keeping his books of account and not the method adopted by him when he submits his returns of income-tax. The Saharanpur Cotton Manufacturing Company's case.¹

There are two main systems of keeping accounts. The one is known as the Cash Basis System and the other the Mercantile System. Under the former system, accounts are kept in respect only of the actual receipts, whereas in the latter system an entry is made as soon as the amount becomes payable to the party, even though the same is not received or paid. Generally speaking, the cash basis is adopted by professional people, whereas the mercantile system is adopted by business-men.

There is a Proviso to the Section 13, under which, if no method of accounting has been regularly employed by the assessee, or, if the method employed is such that, in the opinion of the

¹ 6 I.T.R. 36.

Income-Tax Officer, the income 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. This Proviso was the subject matter of a learned discussion in a recent Lahore case, *viz.* Seth Gurumukh Singh *versus* The Commissioner of the Punjab¹ The Learned Judges who were five in number, came to the same conclusion in the end, but by different processes of reasoning. Three of the Judges held that the Income-Tax Officer can have recourse to the Proviso even in those cases where he rejects the accounts on the ground that they are not genuine and thus fail to represent truly the assessee's income and profits. The remaining two Judges held that, if the books are false, then the Income-Tax Officer can ignore them and proceed to assess the income in his own way, but that when he does so, he does not apply the Proviso. In such a case, the Officer has to discover the probable income of the assessee otherwise than by resorting to the Proviso. The Proviso only applies if there is no regular method of accounting, or if the method is such that the income cannot be properly deduced therefrom, but according to the minority judges, if the books are false, then there is no question of accounting at all, and the position is as if the assessee did not produce any books.

4. AUTHORITIES AND TRIBUNALS.

Classes of Income-Tax Authorities
Section 5.

Section 5 of the Act enumerates the classes of Income-Tax Authorities for the purposes of the Act. They are five in number, namely:—

1. The Central Board of Revenue ;
2. Commissioners of Income-Tax who are sub-divided into :—
 - (a) Commissioners for an area
and
 - (b) Commissioners without reference to area ;
3. Appellate Assistant Commissioners ;
4. Inspecting Assistant Commissioners ; and
5. Income-Tax Officers.

As regards the Commissioners, the Act of 1939 made an innovation. Before that year, there were Commissioners only for an area like Bombay, Madras, Calcutta, etc., etc. **Commissioners.** When the Act was amended in 1939, the appointment of Commissioners without reference to any area was authorised. These Commissioners who are called Central Commissioners, attend to cases which are assigned to them by the Central Board of Revenue.

The Appellate Assistant Commissioner hears appeals against the decisions of the Income-Tax Officer. The Inspecting Assistant Commissioner attends to the administration of the Department and general supervision of the department's work. He supervises assessments, reports to the commissioner cases in which an appeal should be preferred to the Tribunal or a reference taken to the High Court, and sanctions imposition of penalty by the Income-Tax Officer.

Income-Tax Officers are of two grades; the lower grade officer being called Assistant Income-Tax Officer. A question arose whether the appointment of such an officer was legal, inasmuch as Section 5 of the Act did not provide for them. The Bombay High Court held in the case of *in re: Govindram Saksaria*¹ that an Assistant Income-Tax Officer was not a duly appointed Income-Tax Officer. The difficulty caused by the decision in the administration was removed by the passing of a Validating Ordinance², and Assistant Income-Tax Officers are now entitled to act as Income-Tax Officers.

Other Tribunals. There are other Tribunals who also take part in the working of the Act. They are:—

- i. The Income-Tax Appellate Tribunal;
- ii. The High Court;
- iii. The Federal Court; and
- iv. The Privy Council.

The Income-Tax Appellate Tribunal was established in 1941. It consists of not more than ten persons and contains an equal number of judicial members and accountant members. One of the judicial members is appointed by the Central Government to be the President of the Tribunal. The powers and functions of the Tribunal are exercised by the Benches constituted by the President. A Bench must consist of at least two members of the Tribunal, and should be so constituted as to contain an equal number of judicial members and accountant members, or so that the number of the members of the one class does not exceed the number of the members of the other class by more than one. The members act by majority in case of difference of opinion. If they are equally divided, they state the point or points on which they differ, and the case is referred by the president for hearing on such point or points by one or more of the other members of the Tribunal, and it is ultimately decided according to the majority of the members who heard the case, including those who first heard it.

As regards the High Court, the Federal Court and the Privy Council, we shall consider their functions later, when we deal with References and Appeals.

5. JURISDICTION OF INCOME-TAX OFFICERS.

Income-Tax Officers are to perform their functions in respect of such persons or classes of persons, or of such income or classes of income or in respect of such areas as the Commissioner may direct. The Commissioner has to distribute and allocate the work between different Income-Tax Officers. However, the Central Board of Revenue has an over-riding power, and it may empower by a notification an Income-Tax Officer 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, in which case the Income-Tax Officer dealing with the matter before the notification will cease to deal with the same.

The Commissioner may also transfer a case from one Income-tax Officer subordinate to him to another, at any stage of the proceedings, and the Central Board

Distribution and Allocation of Work.
—Sections 5(5) and 5(6).
Transfer of Cases.

of Revenue also may transfer any case from any one Income-Tax Officer to another. If a case is so transferred in the middle of the proceedings, the Officer to whom the case is transferred need not re-issue any notice already issued by the Officer from whom the case is transferred.

Where the assessee carries on a business or profession, he must be assessed by the Income-Tax Officer of the area in which the business or profession is carried on. Where it is carried on at more than one place, the Income-Tax Officer of the area in which the principal place of business or profession is situate will have jurisdiction.

**Jurisdiction
regarding
place of
assessment—
Section 64.**

In other cases, an assessee will be assessed by the Income-Tax Officer of the area in which he resides.

If a question arises regarding the place of assessment, the same will be determined by the Commissioner. If the question is between places in different provinces, the Commissioners concerned, if they are in agreement, and, if not, the Central Board of Revenue, will decide the question. The assessee will have the opportunity of representing his view before the question is determined.

In order that an objection regarding the jurisdiction may not be taken at a late stage, merely for the purpose of delaying proceedings, it is provided that the place of assessment shall not be called in question by an assessee, if

- (a) He has made a return pursuant to a notice for the same under Section 22 (1) and he has stated therein his principal place of business or profession ; or
- (b) He has not made such a return within the time allowed by the notice for the return under Section 22 (2), or Section 34.

If any income accrues or arises or is received at a particular place, the Income Tax Officer for that place shall have jurisdiction in respect of the income, even though the assessee may be carrying on business or residing elsewhere.

When the Act was amended in 1939 and the Commissioners without area were appointed, a question arose whether the Income-

Tax Officers under such a Commissioner had jurisdiction to assess an assessee, notwithstanding the express provisions of Section 64, to the effect that the assessee must be assessed by particular Income-Tax Officers therein mentioned. A test case was taken to the High Court *viz.* that of Dayaldas Khushiram *vs.* The Commissioner, Central,¹ and the Court held that the Income-Tax Officer of the Central Section had no jurisdiction in the case. A Validating Ordinance was, thereupon, enacted and later a sub-section, *viz.* sub-section 5, was introduced in Section 64, under which the provisions of Sub-sections (1) and (2) (regarding the assessment of assesseees by the Income-Tax Officers of areas wherein the assessee carries on his business or resides) are not to apply to any assessee whose case is transferred to the Central Section, or an assessee whose case is transferred to a particular Income-Tax Officer under Section 5 (5) or who belongs to a class of assesseees who are to be assessed by a particular Officer under Section 5 (6).

6. WHO CAN APPEAR ON BEHALF OF AN ASSESSEE.

Persons Entitled To Act For Assesseees—Section 61.

An assessee is entitled to authorise another person to act for him and attend before any Income-Tax Authority or the Appellate Tribunal, provided the latter is :—

- (a) A relative;
- (b) A person regularly employed by the assessee;
- (c) A lawyer;
- (d) An accountant; or
- (e) An income-tax practitioner.

The accountant who appears for an assessee must be a Registered Accountant enrolled in the Register of Accountants maintained by the Central Government under Auditors 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 by the Central Board of Revenue.

The Income-Tax Practitioner referred to above must be a person who appeared as such practitioner prior to 1st April 1938 before any Income-Tax Authority or who has passed any Account-

ancy Examination recognised by the Central Board of Revenue or a person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for the purpose.

A person who has been dismissed from the Government Service is not entitled to represent an assessee. If a lawyer or a registered accountant is found guilty of misconduct in connection with any income-tax matter by the authority empowered to take disciplinary action against them, then such lawyer or accountant will not also be entitled to represent any assessee. If any other person is found guilty of such misconduct by the Commissioner, he may direct that he shall be disqualified to represent an assessee. Before the Commissioner passes his order against any person, he must give him a reasonable opportunity of being heard and such person is entitled to appeal to the Central Board of Revenue against the decision of the Commissioner.

7. PROCEDURE RELATING TO ASSESSMENT.

Before the 1st of May in each year, all the Income-Tax Officers give notice by publication in the press and otherwise as prescribed by the Rules, requiring every person whose total income during the previous year exceeds the amount chargeable to Income-Tax (at present Rs. 2,000/-), to furnish within the time mentioned in the notice (not being less than sixty days), a return in the prescribed form, properly verified, and giving particulars of the total income or the total world income of the assessee during the accounting year. This is a general notice to the public, so that it is the duty of every person whose income exceeds the limit mentioned above, to send in a return of his income to the department.

Although a general notice is given as stated above, the Income-Tax Officer may serve a special notice upon any assessee for such return, and in practice such notice is sent out to all persons who have been previously assessed. The notice must give thirty days' time to the assessee to furnish the return.

An assessee may revise his return if he discovers any omission or wrong statement made in the return previously made by him.

The following is the Form of the Return :—

INCOME-TAX YEAR 19 —19 .

Name.....

Status.....

Address.....

PART I.

Statement of total income and total world income during the previous year ended.....

Sources of Income.	Amount of Income, Profit or Gains.	Tax already Charged or Deducted at Source.
1	2	3
SECTION A.—INCOME WHICH ACCRUED, AROSE, OR WAS RECEIVED OR IS DEEMED TO HAVE ACCRUED, ARISEN OR BEEN RECEIVED IN BRITISH INDIA (<i>and unless the assessee is not resident in British India, income arising abroad excluding income accruing or arising in an Indian State from a business controlled in, or a profession or vocation set up in India, including Indian States</i>).	Rs.	Rs.
1. Salaries.—(The value of rent-free quarters and contributions by your employer to a recognised Provident Fund with interest on such contributions and on accumulations thereof should be shown separately)		
2. Interest on Securities — Interest from which tax has been deducted.. .. Interest which is tax-free ..		
3. Property — Total amount as detailed in Part VI of this Return ..		

PART I—(Contd.)

Sources of Income.	Amount of Income, Profit or Gains.	Tax already Charged or Deducted at Source.
1	2	3
4. Business, profession or vocation.—		
(a) Profits and gains as detailed in Part IV of this Return..	Rs.	Rs.
(b) Share of profits in a register- ed firm		
(c) Share of profits in an un- registered firm		
5. Other Sources.—		
Dividends from companies (gross amount)		
Interest on Mortgages, Loans, Fixed Deposits, Current Ac- counts, etc.		
Ground Rents		
Sources other than those men- tioned above (give details)..		
Total of Section A ..		
SECTION B.—INCOME NOT IN- CLUDED IN SECTION 'A' WHICH ACCRUED, OR AROSE OUTSIDE BRITISH INDIA AND WAS BROUGHT INTO BRITISH INDIA DURING THE PREVI- OUS YEAR.		
(Persons not resident in British India should write "not appli- cable" in this section.)		
1. Out of income which accrued or arose during such previous year (give details).—		
(a) In an Indian State		
(b) Elsewhere		

PART I—(Contd.)

Sources of Income.	Amount of Income, Profit or Gains.	Tax already Charged or Deducted at Source.
1	2	3
2. Out of income which accrued or arose prior to such previous year but after 1st April 1933 (give details) excluding such part of it as has suffered tax after the commencement of the Income-Tax Amendment Act, 1939 .. 3. Out of income accruing or arising in an Indian State which has been included as part of the total income in any preceding assessment but not actually charged to tax (Not to be included in the total at the foot of the page.)	Rs.	Rs.
SECTION C.—INCOME WHICH ACCRUED OR AROSE OUTSIDE BRITISH INDIA DURING THE PREVIOUS YEAR AND IS NOT INCLUDED IN SECTION 'A' OR 'B' (a) Non-residents should show the full amount in column 2 .. (b) Persons resident and ordinarily resident should show here their income accruing or arising abroad other than that in an Indian State (give details) (c) Income accruing or arising in an Indian State from a business controlled in or a profession or vocation set up in India including Indian States. [Applicable to persons <i>resident whether ordinarily resident or not.</i>] ..		

PART I—(Contd.)

Sources of Income	Amount of Income, Profit or Source.	Tax already Charged or Deducted at Source.
1	2	3
(d) Income accruing or arising in an Indian State not included in (c) above. [Not applicable to persons resident but not ordinarily resident.]	Rs.	Rs.
Notes.—For deduction of Rs. 4,500 under the third proviso to section 4(1) (c).		
Income under (c) and (d) is to be included in 'total income' but is exempt from tax for any assessment for 1942-43 and subsequent years.		
TOTAL OF SECTIONS A, B and C Rs.		

PART II

Statement of sums included in total income in respect of which Income-Tax is not payable.—

1. Sums deducted from salary payable by the Crown and to which the Proviso to Sub-Section (1) of Section 7 of the Act applies. ..	Rs.
2. Sums paid to effect an Insurance on the life of the assessee or on the life of his wife or her husband or in respect of a contract for a deferred annuity; or, in the case of a Hindu Undivided Family, to effect an insurance on the life of any male member or his wife. (The original receipt or certificate from the insurance company must be attached) ..	

PART II—(Concl'd.)

3. Contributions to (a) any provident fund to which the Provident Funds Act, 1925, applies; (b) a recognised provident fund; or (c) an approved superannuation fund; and (d) interest on contributions to a recognised provident fund and accumulations thereof which is exempt from Income-Tax	Rs.
4. Share in the income of an unregistered firm or an association of persons where the tax has already been paid or is payable on the income by the firm or association (give details) ..	
5. Interest on tax-free securities	
6. Income accruing or arising in an Indian State which is exempt. [Items (c) and (d) in Section C of Part I.]	
7. Earned income allowance.	
Total .. Rs.	

PART III

Particulars required under Section 22 (5).—

- (a) Particulars regarding the firm's name, the principal place of business, location and style of branches, etc.
- (b) Particulars of the names of the partners, their addresses and their shares; and
- (c) Particulars in case the assessee is a partner in a firm: the name and address of the firm, the name and address of each partner, and the share of each partner.

PART IV

Particulars of Income from Business, Profession or Vocation.

PART V

Depreciation.

PART VI

Income from Property.

I declare that to the best of my knowledge and belief the information given in the above statements in Parts I, II, III, IV, V and VI of this Return is correct and complete, that the amounts of the total income and the total world income and the other particulars shown are truly stated and relate to the year ended and that no other income accrued, arose

or was received by

me
the firm
the family
the association
the company
the local authority

 during the said year and

that

I
the firm
the family
the association
the company
the local authority

 had during the said year no other sources of income.

I further declare that

I
the firm
the family
the association
the company

 was

resident and ordinarily resident
resident but not ordinarily resident
not resident

in British India during the previous year for which the Return is made.

Signature.....
Date.....
Status.....

You will notice that the Statement of the total income and the total word income is divided into three parts or sections. The first section deals with the income which accrued, arose or was received, or is deemed to have accrued, arisen or been received in British India; as every person whether a resident, a person not ordinarily resident or a non-resident is liable to pay tax in respect of such income, it is all collected in Section A. Then, again, if the assessee is a resident or a person not ordinarily resident, he is liable to pay tax on income arising abroad from a business controlled in or a profession or a vocation set up in any part of India, including Indian States. Particulars of such income, unless such income accrues or arises in an Indian State, must also be given in Section A. If such income accrues or arises in an Indian

State, then these particulars are not to be given in Section A, because income accruing or arising in an Indian State is dealt with in Sections B and C. You will remember that such income is specially treated under the provisions of Sections 14(2) (c), and 17(3) and 17(4). Please remember that it is not all foreign Income which is to be included in Section A, but only such foreign income (other than that arising in an Indian State), which arises from a business controlled in or a profession or vocation set up in India. If the foreign income is of any other kind, it is to be included in Section B or C.

The Note in connection with salary has been made so that the Income-Tax Officer may have separate particulars of rent-free quarters and of contributions to provident funds and interest thereon. As I have already told you, contributions to provident funds and the interest thereon are not liable to tax, but are to be included in the total income for rate purposes.

For the same reason, interest on Government Securities which are tax-free, is to be shown separately from that in respect whereof tax has been deducted.

Part VI of the Return contains detailed particulars regarding income from property in a tabular form. The situation of the property, the Municipal valuation, the rents paid by the tenants, the annual letting value and the deductions which are allowed to be made therefrom under Section 9 of the Act have all to be stated separately in the different columns in Part VI.

Income from business, profession or vocation has been divided into three parts. If the assessee is the sole owner of the business, he has to fill in Part IV showing the profit or loss as per Profit and Loss Account, the reserves and the interest credited thereon, the depreciation and other allowable deductions.

If the business is carried on by a firm, then Part IV is to be filled in the Firm's Return. But in the partner's individual Return, he has merely to show against Item 4 (b) or 4 (c) in Section A his share of the profits. If the firm is registered, the amount is shown against item 4 (b); if it is unregistered, it is shown against item 4 (c).

Item 5 in Section A relates to the income from other sources referred to in Section 12 of the Act. The particulars of such income must be given by the assessee in detail.

Sections B and C deal with foreign income other than the kind of foreign income which is to be included in Section A as explained above. If such income is brought into British India in the previous year, it is entered in Section B. If it is not so brought, it is entered in Section C.

Non-residents have not to pay tax on income shown in Sections B and C because they are not liable to pay tax on foreign income unless it is deemed to be British Indian income under Section 42, in which case, it is entered in Section A. However, non-residents have to show their world income for rate purposes (See Section 17 (1) of the Act). They are, therefore, asked to show in Section C their world income other than that shown by them in Section A.

In section B, income arising in the previous year which is taxable under Section 4(1)(b)(ii) is to be shown separately from the income which accrued in years prior to the previous year, and which is taxable under Section 4(1)(b)(iii). In the latter head only such income as has not already suffered tax is to be shown. For example, if, in the Return for the accounting year 1943, foreign income was taxed under Section 4(1)(b)(ii), and if the amount remained in the foreign country in that year, but was brought into British India in 1945, it is not to be included in the Return for the accounting year 1945.

As regards the foreign income of the previous year, which is brought into British India in the same year, that part of it which arises, in an Indian State, is to be shown separately in Section B from that part which arises in any other foreign place.

If any income arises in an Indian State which was included in the total income for rate purposes in a previous assessment but which was not actually taxed under Section 14(2)(c), then such income should also be shown separately, in Section B for the purposes of Section 17 (4) of the Act.¹

In Section C, the assessee should enter all his foreign income of the previous year, (other than that which is to be included in

1 See Pages 30-31 *Supra*.

Section A), which he has not brought into British India in the same year. The income arising in an Indian State is to be shown separately from that arising in other foreign places. As regards the former, a person not ordinarily resident is liable to pay tax thereon if such income is derived from a business controlled in or a profession or vocation set up in India (See Second Proviso to Section 4 (1) of the Act). Hence, this kind of income arising in an Indian State is to be shown separately from any other kind of income arising in an Indian State.

It will thus be seen that, if there is any income which arises, to a resident or a person not ordinarily resident, from a business controlled in or a profession or vocation set up in India, it is to be returned as follows :—

- A If such income arises outside an Indian State, it is to be entered in Section A.
- B If such income arises in an Indian State, it is to be entered in Section C opposite item (c).

Part II of the Return contains items which are not to be taxed, but are nevertheless included in the total income for rate purposes. When the Income Tax Officer has to determine the tax payable by the assessee, he works out the tax payable on the figures given in Part I which include the amounts shown in Part II. He then ascertains the average rate of income tax on such total income, that is to say how many pies in the Rupee are payable by the assessee. He has to ascertain the average rates because of the slab system. The Income Tax Officer next finds out the tax on the sums included in the total income in respect of which income tax is not payable; that is to say, the sums mentioned in Part II of the Return. This tax is worked out at the same average rate. Having ascertained the tax payable on the total of the sums mentioned in Part II, he deducts the amount of such tax from the amount of the tax chargeable on the total income. He also deducts any tax which may have been paid at the source. The balance is the net amount of tax which the assessee has to pay to Government.

In Part III of the Return, the assessee has to give certain particulars as therein required. This is for the purpose of enabling

the Department to gather all detailed information regarding the business or profession of the assessee and regarding the assessee's firm, if any. In Parts IV to VI the assessee has to give detailed information regarding his income from business, profession or vocation and his income from property.

The assessee must also declare his status and must also state whether he was:

- (1) Resident and ordinarily resident; or
- (2) Resident, but not ordinarily resident; or
- (3) Not resident;

in British India during the previous year for which the Return is made.

Annexed to the Return is a sheet wherein the assessee must give information regarding the names and addresses of persons for whom he is a Trustee, Guardian or Agent, as also the names and addresses of all persons to whom he has paid in the previous year, rent interest, commission, royalty or brokerage amounting to more than Rs. 400/-. If he is a member of a joint family, he must give the names and addresses of the members thereof including the Manager or Karta.

If the Income-Tax Officer is satisfied with the Return and does not desire to examine the assessee or take any further evidence, **The Assessment—S. 23.** he will assess the total income of the assessee and determine the amount payable by him on the basis of the return. This is an assessment under Section 23(1).

If the Income-Tax Officer is not so satisfied or desires to gather further information, he will serve on the assessee a notice requiring him to attend his office or to produce or cause to be produced any evidence on which the assessee may rely in support of the Return. This is a notice under Section 23(2). The Income-Tax Officer may also serve a notice under Section 22(4), requiring the assessee to produce such accounts or documents as the Income-Tax Officer may require. There is a Proviso to the Sub-Section 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. We shall discuss this Proviso further later when we deal with the assessments under Sections 23(3) and 23 (4).

The Income-Tax Officer can also take further evidence under Section 37 of the Act. This Section gives the Income-Tax Officer, the appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal, for the purposes of assessments and appeals, all powers as are vested in a Court under the Civil Procedure Code in respect of the following matters, namely :—

I. T. O's power to take evidence—S. 37

- (a) Enforcing the attendance of any person and examining him on oath or affirmation;
- (b) Compelling the production of documents; and
- (c) Issuing Commissions for the examination of witnesses.

After hearing such evidence as he may require, an Income-Tax Officer passes an order assessing the total income of the assessee and determining the sum payable by him on the basis of such assessment. This is an assessment under Section 23 (3).

It is, however, possible that the assessee may give trouble. He may fail to make the return under Section 22 (2); or he may fail to comply with the terms of the notice to produce accounts or documents under Section 22 (4); or, having made a return, he may fail to comply with the terms of a notice under Section 23 (2) to attend the Office of the Income-Tax Officer or produce or cause to be produced any evidence on which the assessee relies in support of the return. In such a case, the Income-Tax Officer is entitled to make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment.

The Privy Council has in the case of the Commissioner C.P. *versus* Laxminarayan Badridas¹ laid down the procedure which should be adopted by the Income-Tax Officer when a best judgment assessment under Section 23 (4) is made. The Officer must not act dishonestly or vindictively or capriciously, but he must exercise his judgment in the matter. He must make what he honestly believes to be a fair estimate of the proper figure of assessment and for this purpose, he must be able to take into consideration local knowledge and repute, with regard to the assessee's circumstances, and his own knowledge of the previous return by, and the assessment of, the assessee and all other

¹ 5 I. T. R. 170.

matters which he thinks will assist him in arriving at a fair and proper estimate, and, though there must necessarily be guess work in the matter, it must be honest guess work. In that sense, the assessment must be to some extent arbitrary. There is no obligation on the Income-Tax Officer to conduct some kind of local enquiry before making the assessment, or recording a note of the details and results of such enquiry.

Section 23(4) also authorises the Income-Tax Officer to penalise an assessee firm in the case of best judgment assessments, by refusing to register the firm or cancelling its registration if it is already registered. The Income-Tax Officer must, however, give fourteen days' notice to the firm, intimating his intention to cancel the registration.

Note that a best judgment assessment under Section 23(4) cannot be made by the Income-Tax Officer unless he has given a notice to the assessee, calling for a return under Section 22(2). Such an assessment cannot be made merely on the ground that general notice has been given in the papers, asking for returns under Section 22(1). Again, the assessment under this Section cannot be made unless the assessee has made a default in one of the three ways mentioned in the sub-section, namely, failing to make a return, failing to comply with a notice under Section 22(4), or failing to comply with a notice under Section 23(2). If, therefore, an assessee has made a return and produced all accounts and documents which he has been required to produce, and given the evidence as required by the Income-Tax Officer but the Income-Tax Officer considers the evidence to be unsatisfactory, as, for example, if he finds that the books are false or unreliable, he cannot make an assessment under Section 23(4), but must make it under Section 23(3). We have already considered this while discussing the proviso to Section 13 of the Act.¹

I told you a short while ago that under the Proviso of Section 22(4), an Income-Tax Officer cannot require the production of accounts relating to periods which are more than three years prior to the previous year. It has been held in a recent case of the Nagpur High Court, *Fatehchand Chhakodilal vs. Commissioner, C. P. and U. P.*² following an earlier decision of the Madras High

¹ See PP. 61-62 *Supra*.

² 13 I.T.R. 198

Court in *T. M. M. Sankaralinga Nadar and Brothers versus The Commissioner of Income-Tax, Madras*¹, that no limit of time has been laid down in Section 23 (3) and Section 37 of the Act in the matter of calling for accounts or for any other evidence which the Income-Tax Officer may desire to take and that the Income-Tax officer is entitled to call for accounts of more than three years back if he makes an assessment under Section 23 (3). The proviso to Section 22 (4) when read with Section 23 (4) only limits the power to call for accounts for more than three years prior to the previous year when the Income-Tax Officer has to make the assessment to the best of his judgment, where the conditions mentioned in Section 23 (4) exist. Where, however, during the course of an enquiry, the Income-Tax Officer is not going to make the assessment to the best of his judgment owing to want of materials, but to make an enquiry as regards the truth or otherwise of the allegations made by the assessee in his return, in order to determine whether the assessee had made out his allegations, there is nothing to prevent him from requiring the assessee to produce any evidence including accounts. It will be unreasonable to suppose that where, for example, an assessee claims certain deductions, and the Income-Tax Office wants to make an enquiry into the truth or otherwise of the assessee's allegations, it is open to the assessee to refuse to produce any accounts beyond three years fixed in the Proviso to Sections 22 (4), and require the Income-Tax Officer to come to a decision on the materials afforded by the three years' accounts.

When a best judgment assessment has been made, the assessee may within one month from the service of the notice of demand for the tax pursuant to such assessment apply for the cancellations of the assessment and for a fresh assessment under the provisions of Section 23, on his satisfying the Income Tax Officer that he was prevented by sufficient cause from making return of the income or complying with any notice under Section 22 (4) or Section 23 (2), or that he did not receive such notice. Sec. S. 27 of the Act. Previously, this was the only remedy left to the assessee who had been assessed under Section 23 (4) and he did not have a right of appeal against such assessment to the Appellate Assistant Commissioner. By reason,

**Cancellation
of Best Judgment
Assessment—S. 27**

however, of the amendment of the Act made in 1939, the assessee who has been so assessed, has now been given the additional right of appeal against the assessment to the Appellate Assistant Commissioner. If the assessee makes an application under Section 27 to cancel the assessment under Section 23 (4) and the Income Tax Officer refuses to do so, then also an appeal will lie against such an order of the Income Tax Officers to the Appellate Assistant Commissioner

Section 30 of the Act enumerates the orders of the Income-Tax Officer against which an appeal can lie to the Appellate Assistant Commissioner. Almost all orders which an Income-Tax Officer can make are now appealable to the Appellate Assistant Commissioner. These include an order refusing to register a firm under Section 26A, an order under Section 25-A regarding the assessment of Hindu Undivided Family, amongst the members of a partition has taken place and an order imposing a penalty, as also an order refusing a claim for a refund of the tax. If an assessee who has been assessed to tax denies his liability to be assessed under the Act, then he also can appeal to the Appellate Assistant Commissioner. A partner of a firm, who objects to the determination by the Income Tax Officer of the amount of the total income of the firm or of the loss thereof or of the apportionment thereof between the partners may also appeal against such orders relating to the firm. He must do so on behalf of the firm and cannot raise the objections regarding the firm's assessment in the appeal against his individual income.

We have already considered the case of a private Limited Company who does not declare a dividend or a sufficient dividend, but instead accumulates reserves for the purpose of avoiding tax, and we have seen that under Section 23-A the Income-Tax Officer has the power in such cases to order that the undistributed portion of the assessable income upto a limit of 60 per cent. should be deemed to have been distributed as dividend amongst the shareholders. An appeal lies against such an order of the Income-Tax Officer passed under Section 23-A. But the appeal must be

preferred by the Company and not by any shareholder in respect of his own assessment.

The appeal must be presented within 30 days of the receipt of the notice of demand relating to the assessment or the penalty which has been objected to, or of the relevant order of the Income-Tax Officer relating to any other matter. The Appellate Assistant Commissioner is, however, given the authority to admit an appeal after the expiration of the period if he is satisfied that the Appellant had sufficient cause for not presenting it within time.

The presentation of the appeal does not absolve the assessee from paying the tax according to the order of the Income-Tax Officer. However, the Income-Tax Officer may allow the assessee to postpone the payment until the appeal is disposed of. See Section 45. To this, however, there is one exception; namely, that, if a penalty is imposed by the Income-Tax Officer under Section 46(1) for the default of the assessee in paying the tax, according to the notice of demand and within the time mentioned in the notice, an appeal shall not lie against the order of the Income-Tax Officer levying such penalty, unless the tax has been paid. See the first proviso to section 30(1).

An Appellate Assistant Commissioner hearing an Appeal may, before disposing of the same, make such further enquiry as he thinks fit or cause a further enquiry to be made by the Income-Tax Officer. The Appellate Assistant Commissioner may at the hearing of the appeal allow the Appellant to go into any ground of appeal not specified in the Grounds of Appeal, if he is satisfied that the omission was not wilful or unreasonable. The Appellate Assistant Commissioner has the power, while disposing of the Appeal, to confirm, reduce, enhance or annul the assessment, or set aside the assessment and direct the Income-Tax Officer to make a fresh assessment after making further enquiries. He has also the power to enhance or reduce a penalty. Before enhancing an assessment or penalty, however, the Appellate Assistant Commissioner must give the assessee reasonable opportunity for showing cause against the enhancement. If, as a result of the Appeal in respect of the assessment of a firm or an association of persons, it becomes

Powers of Appellate Assistant Commissioners on Appeal—S. 31.

necessary to amend the assessments of the partners of the firm or the members of the association, then the Appellate Assistant Commissioner may authorise the Income-Tax Officer to make the amendments.

The Income-Tax Officer has the right to be heard either in person or by a representative at the hearing of an appeal against his order.

Section 33 deals with appeals to the Appellate Tribunal. Within 60 days of the service of the order of the Appellate Assistant Commissioner upon him, the assessee may prefer an appeal to the Appellate Tribunal against such order. The Commissioner is also given the right of an appeal to the Appellate Tribunal against any order passed in favour of an assessee by the Appellate Assistant Commissioner. He must make such appeal within 60 days of the date of the service of the Appellate Assistant Commissioner's Order upon him. Note that the Commissioner has no right of appeal against a faulty order passed by the Income-Tax Officer. He has, however, been given a right of appeal to the Tribunal against any order of the Appellate Assistant Commissioner.

The Tribunal is also given the right to admit an appeal after the expiry of the 60 days, if it is satisfied that there was sufficient cause for not presenting it in time.

The Tribunal has framed its own Rules for the conduct of appeals before it. One of the Rules provides that an appellant shall not, except by leave of the Tribunal, urge or be heard in support of any Ground of Objection not set forth in the Grounds of Appeal, but the Tribunal, in deciding the Appeal, shall not be confined to the Grounds of Objection set forth in the Grounds of Appeal, or taken by leave of the Tribunal under the Rule. Provided that the Tribunal shall not rest its decision on any other ground, unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

After giving an opportunity of being heard to both the parties, the Tribunal will pass such orders as it thinks fit. It is

so provided by Section 33(4). This Sub-Section was recently construed in a Bombay case, *viz.* The Motor Union Insurance Company, Limited *versus* The Commissioner of Bombay.¹ It was decided in the case that the Tribunal has not the power to enhance an assessment. We have seen above that the Appellate Assistant Commissioner has such a right.

Before the amendment of 1939, the Commissioner had the right to send for the record of any proceedings taken by any authority subordinate to him, and make such enquiry, or cause such enquiry to be made, and pass such orders thereon as he thought fit. This was under the old section 33 which has now been bodily altered to the present section which deals with a quite different matter, namely, the Appeal to the Appellate Tribunal. There have been several decisions of various courts in respect of the old Section 33, whereby the powers of the Commissioner under the Section have been defined. These decisions are, however, academic, in view of the fact that the Commissioner no longer enjoys the power of review, except to a limited extent as presently stated. By an amendment of the Act made in 1941 (being the Amending Act XXIII of 1941), a new Section, *viz.* Section 33A has been inserted in the Act. Under this Section, the Commissioner may call for the record of any proceedings under the Act, in which an order has been passed by an authority subordinate to him, and after making enquiries or causing enquiries to be made, may pass such order thereon as he thinks fit, provided the order is not prejudicial to the assessee. The Commissioner can not, therefore, now pass any order in revision, which is prejudicial to the assessee and the section is not ordinarily resorted to by the assessee himself unless he desires the Commissioner to intervene without going through the expense of an appeal. There is a proviso to the section, that the Commissioner cannot pass such an order in revision, if an appeal is pending before the Appellate Assistant Commissioner or the Appellate Tribunal, and the order cannot be passed by the Commissioner until after the times for such Appeal has expired, nor can a revision be made by the Commissioner in res-

pect of an order of a subordinate Officer passed more than one year previously.

Under Section 35 of the Act any mistake apparent from the record may be rectified. Such rectification can be made by the Commissioner or the Appellate Assistant Commissioner or the Income-Tax Officer or the Appellate Tribunal. The rectification can be made within four years from the date of the original order. No rectification can be made having the effect of enhancing an assessment or reducing a refund, unless notice has been given to the assessee and he has been allowed a reasonable opportunity of being heard.

The Tribunal's finding on a question of fact is final. If, however, a question of law arises out of the order of the Tribunal, then either the Assessee or the Commissioner may require the Tribunal to refer such question to the High Court. The application for the reference should be made within 60 days of the date on which the Tribunal's order is intimated to the applicant.

The Tribunal may refuse to state the case either on the ground that no question of law arises or on the ground that the application is time-barred. In such a case, the aggrieved party has the right to take out a rule in the High Court, and if that court is not satisfied of the correctness of the Tribunal's decision, it may require the Tribunal to state the case and refer it to the court or treat the application as made within the time as the case may be. The application to the High Court for the rule should be made within six months from the date of the service of the Tribunal's order of refusal in case such refusal is on the ground that no question of law arises, and within two months from the date of such service in case the refusal is on the ground that the original application to the Tribunal is time-barred.

The function of the High Court in cases referred to it under Section 66 is advisory only and is confined to considering and answering the actual question referred to it.

The Privy Council has deprecated the practice of the High Court itself formulating the questions to be decided—The Commis-

sioner of Income-Tax Bihar and Orissa *versus* The Maharajahdhiraj Kameshwar Singh of Darbhanga.¹ It has been recently held by the Bombay High Court in the case of The Indian Piece-goods Bazar Company, Limited *versus* The Commissioner of Income-Tax, Bombay,² that in such a case the proper procedure for the High Court is to refer the case back to the referring body, and ask it to state the proper question of law. This should specially be done when a contention has been put forward as a ground of appeal before the referring body and it has not been dealt with by that body.

In the case of Sir Rajendra Narayan Bhanja Deo *versus* The Commissioner of Income Tax, Bihar and Orissa³ the Privy Council observed that it would refuse to decide a question which was purely academic. It may well be that when the document in question was considered, some question may emerge with regard to the assessee's liability to income tax. Yet, it would be contrary to the practice of the Board to attempt to formulate any such question, even if they had before them the materials for so doing.

If the High Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the question raised thereby, the Court might refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

Upon hearing the reference, the High Court shall decide the question referred to it, and deliver its judgment thereon. A copy of the judgment will be sent to the Appellate Tribunal who shall pass such orders as are necessary to dispose of the case conformably to such Judgment.

Nowwithstanding that a reference has been made, the tax shall be payable in accordance with the assessment made in the case. If the amount of the assessment is reduced as a result of the reference, the amount over-paid is to be refunded with such interest as the Commissioner may allow. The Commissioner may, however, within 30 days of the receipt

1 I. I. T. R. 94.

2 Unreported Income-Tax Reference No. 3 of 1944.

3 8 I.T.R. 495.

of the result of the reference intimate to the High Court that he intends to ask for leave to appeal to His Majesty in Council, in which case, the High Court may make an order authorising the Commissioner to postpone the payment of the refund until the disposal of the appeal to His Majesty in Council.

Section 205 of the Government of India Act 1935 provides that an appeal shall lie to the Federal Court from any judgment of a High Court, if the High Court certifies that the case involves a substantial question of law, as to the interpretation of the Government of India Act, or any Order in Council made thereunder.

Appeal to the Federal Court—Section 205 of the Government of India Act.

If, therefore, the reference involves a question of law regarding the interpretation of the Government of India Act, or any Order in Council made thereunder, an appeal from the Court's judgment shall lie to the Federal Court. In such a case, no direct appeal lies to the Privy Council either with or without previous leave.

In all other cases, an appeal from the decision of the High Court lies to the Privy Council, provided that the High Court certifies the case to be a fit one for appeal to His Majesty in Council. Such a certificate will be given

Appeal to the Privy Council—Sec. 66A.

if the case involves a question of great private or public importance. If the case would be an important precedent, governing numerous other cases, the certificate would be granted. The Delhi Cloth and General Mills Company Limited *versus* The Commissioner of Income-Tax.¹ Leave should not be refused merely on the ground that the amount of tax involved is small. The Commissioner of Income-Tax, Madras *versus* S. L. Mathias.² The High Court has no power to impose any condition as to costs while granting leave, but Their Lordships of the Privy Council have on occasions stipulated in granting special leave to appeal that the appellant shall bear the costs.

The provisions of the Code of Civil Procedure relating to appeals to the Privy Council shall so far as may apply in the case of appeals under Section 66-A in like manner as they apply in the case of appeals from decrees of a High Court.

Where the judgment of the High Court is varied or reversed in appeal by the Privy Council, effect shall be given to the order of the Privy Council in the same manner as in the case of a judgment of the High Court.

8. INCOME ESCAPING ASSESSMENT.

Prior to the Amending Act of 1939, it was provided by the old Section 34 of the Act that if for any reasonable cause, income chargeable to income-tax had escaped assessment in any year, or had been assessed at too low a rate, the Income-Tax Officer was entitled at any time within one year of the end of the assessment year, to serve upon the person liable to pay the tax a Notice containing all or any of the requirements included in a Notice under Section 22 (2) and may re-assess such income. It was decided under that Section that, if, in the taxing year, the income assessed was not the whole of the income of the assessee, then within the time-limit provided in the Section, it was open to the Income-Tax Authorities to revise it whether the assessment previously made was inadvertent or deliberate, or was due to a wrong allowance or improper deduction or a low rate. The Commissioner of Income-Tax, Bombay, *versus* G. V. Manohar. See also Chimamram Motilal *versus* The Commissioner, Bombay². It was, however, further held in the above cases that the Section did not authorise one Income-Tax Officer to sit in judgment over the order of his predecessor. If, for example, an assessee is carrying on the business of buying and selling gold and silver and the first Income-Tax Officer assesses the income on an estimate at 3 per cent. on the sale of gold and 5 per cent. on the sale of silver, another Income-Tax Officer cannot in a subsequent year re-assess the income under Section 34 merely because in his opinion his predecessor had under-estimated the profits.

The Act of 1939 amended the Section materially, and now an Income-Tax Officer cannot re-assess the income under the Section unless in consequence of definite information which has come into his possession, he discovers that income has escaped assessment. To this extent, the powers of the Income-Tax Officer have been

controlled. However, as against this, a re-assessment can now be made at any time within four years from the end of the assessment year, and, in case the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars, he may re-assess the income within eight years from the end of the assessment year.

If, however, the assessment already made or the assessment to be made is an assessment on a person deemed to be the agent of a non-resident person under Section 43, the notice should be served within one year from the end of the assessment year.

It has been held under the amended Section that a supposed error of law on the part of the first Income Tax Officer cannot put the Section in operation: The Commissioner of Income-Tax, Bombay, *versus* Sir Mahomed Yusuf Ismail.¹ In such a case, it cannot be said that definite information came into the possession of the Income-Tax Officer, which resulted in discovering that income had escaped assessment. See also V. M. Raghavalu Naidu *versus* The Commissioner, Madras². If, however, the notice which is served on the assessee under Section 34 is the result of a High Court's decision in respect of the earlier order, then it can be said that the Income-Tax Officer has been in receipt of definite information as to the state of the law and he would be justified in issuing the notice: The Commissioner of Income-Tax, Madras, *versus* K.M.S. Lakshmana Iyer³.

While initiating the proceedings, the Income-Tax Officer is not required to convene the assessee or intimate to him the nature of the escapement, or give him an opportunity of being heard before deciding to exercise his powers under the Section: The Commissioner, Bengal, *versus* Mahaliram Ramjidas⁴. It was also held in this case that after the notice, the assessment proceedings are to be started *de novo*.

When a re-assessment is made under Section 34, the tax is to be charged at the rate applicable to the year of assessment, for which the assessment is being made.

9. LIMITATION FOR ASSESSMENT.

Under Section 34(2) no order of assessment can be passed after the expiry of four years from the end of the assessment year, except that, if the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, an order of assessment can be passed before the expiry of eight years from the end of the assessment year. This provision does not apply to a re-assessment made pursuant to the order passed in appeal by an Appellate Assistant Commissioner or by The Tribunal or by the High Court or by the Privy Council. It is obvious that a final order, after the case has passed through several appeals, might be made after years, and the final re-assessment should not be rendered void by reason of the above provision.

LECTURE IV.

PRECAUTIONS AND PROSECUTIONS

[Ss. 18 - 18A - 19A - 20A - 21 - 24A - 25 (1)-25 (2) - 28 - 29 - 38 - 39 - 44- 44A - 44B - 44C - 45 - 46 - 48 - 49 - 49A - 49B - 49C - 49D - 49E - 49F - 50 - 51 - 52 - 54 - 65 - 67].

1. COLLECTION OF TAX.

On completing the assessment, the Income-Tax Officer issues a Notice of Demand under Section 29 of the Act. The assessee must pay up the tax within the time mentioned in the notice, even though he may have preferred an appeal, and, if he does not do so, he will be deemed to be in default, provided that the Income-Tax Officer may, when such an appeal has been presented, treat the assessee as not being in default until the appeal is disposed of.—See Section 45. In case the assessee fails thus to pay up the tax within the time mentioned in the notice, the Income-Tax Officer may recover a further sum not exceeding the amount of the tax by way of penalty. He may not levy the whole penalty at once, but may levy a sum less than the amount of the tax at first, and may enhance the sum from time to time in the case of a continuing default, but the total amount of the penalty should not exceed the amount of the tax—S. 46 (1) and Section 46 (1-A).

The Income-Tax Officer is also entitled to take steps for the recovery of the tax as if it were an arrear of land revenue. He may also take the steps which under the Civil Procedure Code could be taken for the recovery of an amount due under a Decree by execution through a Court—See S. 46 (2).

The Commissioner may also direct that in any Province arrears of Income-Tax may be recovered by the same process as that enforceable for the recovery of arrears of Municipal Taxes and may direct by what authority any such powers shall be exercised or performed—See Section 46(3) and Section 46(4).

The Income-Tax Officer may also direct an employer to deduct arrears of taxes payable by an employee from any future salary which may be paid by the employer to the employee and on such an order being sent to the employer, he shall be bound to comply with the same, and deduct the tax from the salary payable to the employee, and pay it to the Government—See Section 46(5).

Under Section 124(1) of the Government of India Act 1935, the Governor-General may, with the consent of a Provincial Government, entrust to the latter or to its officer functions in relation to any matter to which the Central Executive authority extends. If, pursuant to that Section, recovery of income tax is entrusted to a Provincial Government in any area, the Provincial Government may direct that Income-Tax shall be recovered in that area along with, and as an addition to any Municipal Tax or Local Rate by the same authority which recovers the Municipal Tax or Local Rate—See Section 46(6).

Under Section 46(7) of the Act, no proceedings can be commenced for the recovery of the tax after the expiration of one year from the last date of the Financial Year in which any demand is made for the same. To this there are certain exceptions. If the tax is allowed to be paid by instalments, the one year mentioned in the sub-section shall be reckoned from the due date of the last instalment. There is no limitation also when a person is sought to be made liable as the Statutory Agent of a non-resident under Section 42(1). Nor, where an assessee has been assessed in respect of Foreign Income arising in a country the laws of which prohibit or restrict remittance of money to British India.

2. SAFE-GUARDS FOR COLLECTION.

In order that tax may not escape recovery, the Act provides for several precautionary measures or safe-guards. **Deduction at Source—S. 18.** One of them is deduction of tax at source as provided in Section 18. The deduction is required to be made in the following cases:—

- (1) *Deduction from salary:* Any employer paying any salary to an employee is bound to deduct at the time of pay-

Deduction from Salary—Ss. 18(2) 18(2A) 18(2B). ment, income-tax and super-tax on the salary at the average rate applicable thereto. If he has failed to deduct the tax in any month or has deducted a smaller or larger amount, he may make the necessary adjustments when deducting the amount in the next month or months. If an employer has to pay any money by way of salary to a non-resident, then he is bound to deduct income-tax thereon at the maximum rate and super-tax at the rate applicable to the estimated income of the non-resident.

(2) *Deduction in respect of Interest on Securities.* This is done under Section 18 (3) by the Officer who pays the interest on the Securities. Only Income-Tax is deducted and not Super-Tax. The deduction in this case is made at the maximum rate. The assessee is, however, entitled to a refund as will be seen later.

In several cases, *e.g.* in case of poor widows who get a fixed yearly income, an exemption certificate is granted by the Income-Tax Officer that to the best of his belief the total of the income or of the world income of the recipient will be less than the minimum liable to income-tax, or will be liable to a rate less than the maximum rate. In such a case, the Officer paying the interest will pay the same without deduction or by deducting tax at the smaller rate mentioned in the certificate.

(3) *Deduction in respect of Interest or other income payable to non-residents.* As a Non-resident has to pay income-tax at the maximum rate, any person making any payment to a non-resident must deduct income-tax therefrom at the maximum rate. I have already told you that this is to be done by an employer under Section 18 (2B). Similarly, if a person pays interest or any other sum chargeable to tax to a non-resident, he must deduct income-tax thereon at the maximum rate under Section 18 (3A). If a non-resident is, however, a British subject or the subject of an Indian State or Burmah, and the Income-Tax officer certifies that the total world income of the payee will be less

Deduction in respect of income of Non-residents—Ss. 18 (2B)-18 (3A)-18 (3B)-18 (3C)-18 (3D)-18 (3E).

than the minimum rate or will be liable to tax at a rate less than the maximum rate, the payer is entitled to act on the certificate, in which case, he may pay the interest or other amount as aforesaid without deduction or after deducting tax at the smaller rate mentioned in the certificate.

The above deductions are in respect of income-tax, but a non-resident may also be liable to pay super-tax. It is, therefore, provided by Section 18 (3B) that where the I.T.O. has reason to believe that the total world income of a non-resident will in any year exceed the limit upto which super-tax is not charged, he may order the person responsible for making the payment to the non-resident to deduct super-tax at the rate determined by the Income-Tax Officer as that applicable to the total world income of the payee. So also, if the amount which is to be paid to the non-resident is itself a large amount and exceeding the super-tax limit, then the person making the payment must deduct super-tax from the amount which is payable on the excess over super-tax limit at the rate applicable to the excess.— See S. 18 (3C).

Similar provisions are made under Sections 18 (3D) and 18 (3E) in respect of dividends payable to non-residents and the Income-Tax Officer may order the Company paying the dividend to deduct therefrom super-Tax at the rate determined by the Income-Tax Officer and if the dividend itself amounts to a large sum exceeding the super-tax limit then the Company must without such order deduct the amount of super-tax on the excess over the super- tax limit.

All sums deducted as aforesaid are to be sent by the person deducting the same to the credit of the Central Government. If a person fails to deduct any amount or to forward the same to the Central Government, he will himself become liable to pay the tax.

Under Section 65 of the Act, any person who so deducts the tax is indemnified for deducting the same.

In 1944 a new scheme was introduced for payment of income-tax in advance before the year of account is closed. The provisions **Pay as you earn—S. 18-A.** are incorporated in the new Section 18-A. They were introduced not so much for safe-guarding the collection of revenue as for checking inflation. Before the scheme, the person who paid tax before the end of the year of account, was usually the employee, out of whose salary the employer deducted the tax. Under the new scheme, every body else also pays tax on the income as he goes on earning the same. Shortly stated, the scheme is that the assessee pays in advance the tax on the basis of the last assessed income, but at the rate applicable to the Financial year in which the income is earned. Thus, suppose, in March 1944, the assessee is assessed in respect of the assessment year 1942-43 for the income of the previous year, namely, 1941-42 and that the income so assessed amounts to Rs. 50,000/-. In such a case, he pays in advance for the assessment year 1945-46 tax on Rs. 50,000/- at the rates applicable for the Financial Year 1944-45. This is, however, a provisional payment and the adjustment is made when the income for the accounting year 1944-45—assessment year 1945-46— is ultimately assessed.

The Act provides another precautionary measure for the case of a departing assessee under Section 24-A. If it appears to **Departing Assessee —S. 24-A.** the Income-Tax Officer that any person may leave British India during the current Financial Year or shortly thereafter without the intention of returning, he may serve a seven days' notice upon him and call for a return and assess his income upto the date of his departure, even though such income is subsequent to that of the accounting year of the assessee.

Any person discontinuing a business is bound to give notice to the Income-Tax Officer of the discontinuance within 15 days **Discontinuing Business—Ss. 25 (1), 25(2) and 44.** thereof. Otherwise, he becomes liable to pay a penalty. In the case of such discontinuance, he will be assessed in the year of assessment even for the income earned in the assessment year—See Sections 25(1) and 25 (2). The Act provides another safeguard for the collection under Section 44, and it is enacted by that section that each partner of a dissolved firm is liable for payment of tax in respect of income of the whole firm.

As revenue is likely to be lost in respect of profits from a shipping business, by reason of movements of the ships, special provisions have been made in the matter by Sections 44-A, 44-B and 44-C. These provisions apply if the owner or charterer of the ship resides out of British India and carries on business in British India but there is no Agent in British India from whom the tax would be recovered. In such a case, the Master of the Ship has to furnish, before the departure of the ship from the Port, a return of all the amounts payable, or paid, for the carriage of persons, live-stock or goods shipped at the Port. The Income-Tax Officer will assess the income and, in order to determine it in a rough and ready manner, the same will be taken to be 1/20th of the amount so paid or payable, and the tax thereon shall be paid at the rate applicable to a Company. The tax must be paid before the ship departs from the Port. However, the owner or charter may ask for a regular ordinary assessment in the following year, and claim a refund if the tax payable is less than the amount he has paid. And, of course, if in such a case, the tax amounts to a larger sum, then he must pay up the balance.

Special Provisions re: Ships—Ss. 44-A, 44B and 44C.

3. SUPPLY OF INFORMATION.

The Act also contains certain provisions which enable the department to remain informed about the income of the Tax Payers.

Under Section 19-A the principal officer of a Company must furnish particulars of a dividend paid by the Company to its shareholders which exceed the prescribed limit. The limit at present is Rs. 5,000/- according to Rule 42 of the Income-Tax Rules.

Any person paying more than Rs. 400/- by way of interest, must also give the particulars of the payment, in the prescribed manner. This is under Section 20-A.

All employers have to furnish particulars of the salaries paid to their employee, exceeding the prescribed limit and the tax which may have been deducted therefrom under Section 18. It is so provided by Section 21. At present the prescribed limit is Rs. 1,600/- per year according to Rule 16.

The Income-Tax Officer or any Assistant Commissioner may call upon any firm or Hindu Undivided Family to furnish particulars of the members of the firm or the family. Such an Officer may also call upon any guardian, trustee or agent to give particulars about the Ward, the beneficiary or principal. He may also call for particulars regarding the payments made by an assessee in respect of rent, interest, commission, royalty, brokerage or annuity exceeding Rs. 400/-—See Section 38.

The Income-Tax or an Assistant Commissioner may also inspect any Company's Register of Share-holders, Debenture Holders, or Mortgagees.—See Section 39.

4. PENALTIES

Several penalties have been prescribed by the Act for defaults made by assessee. The provisions are incorporated in Section 28 of the Act. The penalties are levied for the following defaults:—

- i. For failure to furnish return of income in time;
- ii. For failure to produce accounts or documents or evidence under Section 22(4) or Section 23(2) ;
- iii. For concealing income or furnishing false particulars; and
- iv. For a distribution made by a firm of profits between the members otherwise than in accordance with the partnership deed which has been registered.

If a penalty is levied, then the assessee shall not be prosecuted for the offence—Section 28(4).

Before levying the penalty, the Income-Tax Officer must obtain the previous approval of the Inspecting Assistant Commissioner—Section 28(6); and give an opportunity to the assessee or a partner as the case may be of being heard—s. 28 (3)

5. PROSECUTIONS

An assessee who is guilty of falsification of accounts or other similar offence, can be prosecuted in the ordinary way under the Indian Penal Code. Apart from this, the Act itself makes certain acts of the assessee liable to prosecution. They are as follows:—

- i. Failure to deduct tax or arrears of tax under Section 10 or Section 46(5) ;

- ii. Failure to furnish a certificate of deduction of tax or a statement containing particulars of the dividends or interest which may have been paid or other statements according to the Act ;
- iii. Failure to produce certain documents under Section 22 (4) ;
- iv. Default in allowing inspection of Company's Register—Section 39 ; and
- v. Making false statements in a return or in other particulars which are furnished to the Department.

The provisions in respect of the above offences are made in Section 51 and 52 of the Act.

6. REFUNDS

If an Assessee satisfies the authorities that he has paid more tax than is chargeable to him, he is entitled to a refund of the excess paid by him under Section 48 of the Act.

Refunds —S. 48 One such case which we have already considered is the case of a poor man who has received a small sum by way of dividend from a Company. I have already explained to you¹ how a refund in respect of dividends is paid under the provisions of Section 18 (5) and Section 49B.

At the Conference of the United Kingdom and the Governments of the Dominions and India an agreement was arrived at regarding the relief against double income-tax. The provisions were made in the English Act in the matter and corresponding provisions have been incorporated in the Indian Income-Tax Act. They are embodied in Sections 49, 49A, 49C and 49D.

Double Tax Relief—Ss. 49, 49A, 49C and 49D. Section 49 deals with cases in which a person has paid tax in the United Kingdom. As, for example, when he receives a dividend from an English Company which has been taxed in England. Section 49A deals with cases in which the assessee has paid tax under any law in force in any Indian State or part of His Majesty's Dominion other than the United Kingdom.

See pages 43-44 *supra*.

Section 49D deals with the case of an assessee who pays tax under the Indian Income-Tax Act for income arising outside British India in a country the law of which does not provide for relief in respect of tax paid in British India, and also pays income-tax under the laws of the said country in respect of the same income. In such a case, a special concession is made to the assessee under the Section.

Set off—S. 49 E. The Department is entitled to set off any amount, payable to an assessee for refund, against any arrears of tax remaining payable by him.—See Section 49E.

Refund by legal representatives—S. 49F. If an assessee who is entitled to a refund is dead, his legal representatives can claim such refund.—See S. 49F.

Limitation for refund—S. 50. A claim for refund can be made only within four years of the assessment year.—See Section 50.

7. SECRECY.

With a view to protect the Tax Payer, it is enacted by Section 54 that all particulars furnished by an assessee or otherwise obtained in connection with his assessment are confidential and notwithstanding anything contained in the Indian Evidence Act, no court is entitled to require any public servant to produce before it any return or record relating to such particulars or give any evidence in respect thereof. There are certain exceptions which are mentioned in Sub-Section 3 of the Section. For example, the particulars may be disclosed for the purpose of a prosecution under the Indian Penal Code in respect of any such statement, return, accounts, etc. or for the purpose of a prosecution under the Act.

So also, one officer can disclose the particulars to another when it is necessary to do so for working the Act.

The particulars may also be disclosed to an Officer enquiring into the qualifications of electors for ascertaining whether a person is or is not entitled to be entered on the Electoral Roll.

A breach of the provisions of the Sections is made an offence and if a public servant discloses any particulars which he is not

entitled to disclose, he shall be punishable with imprisonment extending to six months and shall also be liable to fine.

No prosecution shall be instituted under the Section except with the previous sanction of the Commissioner.

8. BAR OF PROCEEDINGS.

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

THE INDIAN INCOME-TAX ACT, 1922
(XI OF 1922).

(AS MODIFIED UP TO THE 1st SEPTEMBER, 1945).

THE INDIAN INCOME-TAX ACT, 1922.

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THE INDIAN INCOME-TAX ACT, 1922.

(ACT No. XI of 1922.)

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

(Including 1945 Amendments)

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

Short Title, Extent and Commencement. 1. (1) This Act may be called the Indian Income-tax Act, 1922.

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

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

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

(1) “ agricultural income ” means—

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

(b) any income derived from such land by—

(i) agriculture, or

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

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

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

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

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

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

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

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

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

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

(6A) "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 share-holders 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).

Explanation.—The words 'accumulated profits,' wherever they occur in this clause, shall not include 'capital profit';

3.1. (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 “Othersources” 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 a 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 (vi) of sub-section (2) of section 10 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,

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

(9) “person” includes a Hindu undivided family 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 12 months in respect of a year ending on any date other than the said 31st day of March, then at the option of

the assessee the year ending on the day to which his accounts have so been made up :

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 ;

(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

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

CHAPTER I

Charge of Income-Tax.

3. Where any Act of the Central Legislature enacts that income-tax shall be charged for any year at any rate or rates...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. (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 British India in such year by or on behalf of such person, or
- (b) if such person is resident in British India during such year,—
 - (i) accrue or arise or are deemed to accrue or arise to him in British India during such year, or
 - (ii) accrue or arise to him without British India during such year, or
 - (iii) having accrued or arisen to him without British India before the beginning of such year and after the 1st day of April, 1933, are brought into or received in British India by him during such year, or
- (c) if such person is not resident in British India during such year, accrue or arise or are deemed to accrue or arise to him in British India 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 British India, income, profits and gains which accrue or arise to him without British India 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 British India by him during such year:

Provided further that if in any year the amount of income accruing or arising without British India exceeds the amount brought into

British India 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 British India shall not be deemed to be received in or brought into British India within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance sheet prepared in British India.

Explanation 2.—Income which would be chargeable under the head ‘Salaries’ if payable in British India and not being pension payable without India shall be deemed to accrue or arise in British India wherever paid if it is earned in British India.

Explanation 3.—A dividend paid without British India shall be deemed to be income accruing and arising in British India to the extent to which it has been paid out of profits subjected to income-tax in British India.

(2) For the purposes of sub-section (1), where a husband is non-resident in British India, remittances received by his wife resident in British India out of any part of his income which is not included in his total income shall be deemed to be income accruing in British India 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.
- (iia) 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 Fund to which the Provident Funds Act, 1925 (XIX of 1925), applies. . . .
- (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 receipts arising from business of 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 a person accredited as representative in British India for political purposes of an Indian State or the Ruler thereof, as his remuneration from the State or Ruler for service in such capacity ;
 - (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 British subject or the subject of an Indian State, as remuneration from such foreign State for service in such capacity ;
 - (d) by a Trade Commissioner or other official representative in British India of the Government of any other part of the British Empire 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 His Majesty's Forces, or of any member of an Indian State Force so serving, and any other income accruing or arising without British India which is received in or brought into British India by any such member while the Force to which he belongs is serving with His Majesty's Forces.

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 inure for the benefit of the public.

Resident in British India. 4A. For the purposes of this Act—

- (a) any individual is resident in British India in any year if he—
 - (i) is in British India 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 British India for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in British India for any time in that year ; or
 - (iii) having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in British India for any time in that year otherwise than on an occasional or casual visit ; or
 - (iv) is in British India for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in British India during that year is likely to remain in British India 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 British India unless the control and management of its affairs is situated wholly without British India ; and
- (c) a company is resident in British India in any year (a) if the control and management of its affairs is situated wholly in British India in that year, or (b) if its income arising in British India in that year exceeds its income arising without British India in that year.

Ordinary Residence. 4B. For the purposes of this Act—

- (a) an individual is 'not ordinarily resident' in British India in any year if he has not been resident in British India in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in British India 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 British India if its manager is ordinarily resident in British India ;
- (c) a company, firm or other association of persons is ordinarily resident in British India if it is resident in British India.

CHAPTER II

Income-tax Authorities

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

- (a) the Central Board of Revenue,
- (b) Commissioners of Income-tax,

(c) Assistant Commissioners of Income-tax who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax.

(d) Income-tax Officers.

(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 areas, 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 made at any stage of the proceedings, and shall not render necessary the re-issue 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. (1) The Central Government shall appoint an Appellate Tribunal consisting of not more than ten persons to exercise the functions conferred on the Appellate Tribunal by this Act.

(2) The Appellate Tribunal shall consist of an equal number 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 Auditors 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) A Bench shall consist of not less than two members of the Tribunal, and shall be constituted so as to contain an equal number of judicial members and accountant members, or so that the number of members of one class does not exceed the number of members of the other class by more than one.

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

Heads of Income
Chargeable to
Income-tax.

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Income from property.
- (iv) Profits and gains of business, profession or vocation.
- (v) Income from other sources.

7. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits . . . 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 sum¹ deducted from the salary payable by or on behalf of the Crown to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary:

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 British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by or on behalf of the Crown or by a local authority established in the exercise of the powers of the Crown Representative or the Central Government in that behalf.

8. The tax shall be payable by an assessee under the head " interest on securities" in respect of the interest receivable by him *Interest on Securities.* 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 realising such interest on behalf of the assessee or in respect of any interest payable or money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without British India, 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 British India 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 Provincial Government issued income-tax free shall be payable by the Provincial Government.

9. (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 property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value :
- (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value :
- (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction :
- (iv) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge ; where the property is subject to 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 British India 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 British India 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, that 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 purpose 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.

10. (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 a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional 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 British India, 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 British India, 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 shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause ;

- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, 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 any other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed :

Provided that—

- (a) the prescribed particulars have been duly furnished;
- (b) where full effect cannot be given to any such allowance in any year 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 (a) 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,
- (vii) in respect of any machinery or plant which has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant 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 machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place ;

- (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 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 (xii) 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 (xiv) 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 British India 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;
- (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 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. Omitted by Section 12 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939).

Professional Earnings.

12. (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).

Other Sources.

(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 British India, 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 British India and tax has not been paid thereon nor deducted therefrom under section 18.

(3) Where an assessee lets on his 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) and (vi) of sub-section (2) of section 10 in respect of such buildings.

12A. 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 each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

13. Income, profits and gains shall be computed, for the purposes of section 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 if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deducted therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family, where such sum has been paid out of the income of 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 an Indian State, unless such income, profits or gains are received or deemed to be received in or are brought into British India in the previous year by or on behalf of the assessee, or are assessable under section 42.

15. (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. 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 Act of the Central Legislature 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.

Exemptions and exclusions determining the total income.

16. (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 and section 15 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 settlor or disponent, shall be deemed to be income of the settlor or disponent, 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 retransfer directly or indirectly of the income or assets to the settlor, disponent or transferor, or in any way gives the settlor, disponent 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 'settlor or disponent' 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 settlor or disponent derives no direct or indirect benefit but that the settlor 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 a company 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 the 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. (1) Where a person is not resident in British India, and is a British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914 (4 and 5 Geo. 5, c. 17), or a subject of a State in India or Burma, or a native of a Tribal Area, 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, 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 British India 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 British India 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 British India, 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 British India,

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.

CHAPTER IV

Deductions and Assessment

Payment by Deduction at Source.

18. (1) *Repealed by section 7 of the Indian 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 Crown, 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 British India 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 British India 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 British subject as defined in section 27 of the British Nationality and Status of Aliens Act, 1914 (4 & 5 Geo. 5, c. 17), or a subject of a State in India or Burma, 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 British India 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 British India, and no order under sub-section (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 British India 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 a company (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 shareholder is resident in British India, and no order under sub-section (3D) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (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-section (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. (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 :

Advance Payment
of tax.

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 profits 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 not 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 the 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 that 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 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 1st 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, 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 in 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 foregoing 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 provisions 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 subsection.

(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.

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

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

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

21. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form 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. (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-section (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. (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 judgment 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 assessed and the sum payable by him on the basis of such assessment 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 British India, 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 ; 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. (1) Where the Income-tax Officer is satisfied that in respect of

Power to Assess
Individual Members
of Certain Companies.

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 share 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-tax 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 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 subsection,—

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 profit) carrying not less than twenty-five per cent of the voting power have been allotted unconditionally to or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public

(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 * * * company 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 this total income under the provisions 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 subsection to distributions of profits by that company.

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

Set off of Loss in
Computing Aggregate
Income.

Provided that, where the loss sustained is a loss of profits or gains which would but for the loss have accrued or arisen within an Indian State 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 an Indian State 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 years 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 an Indian State 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 not 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 occurred 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.

(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 (1) When it appears to the Income-tax Officer that any person may leave British India during the current financial

**Assessment in Case of
Departure from British
India.** 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 British India, or where he has not been previously assessed, on his total income of

the period up to the probable date of his departure from British India. 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. (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 subsection (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. (1) Where any business, profession or vocation to which sub-section (3) is not applicable, is discontinued in any year, and Assessment in case of Discontinued Business. assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

(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 (II 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. (1) Where, at the time of making an assessment under section

Assessment After
Partition of a Hindu
Undivided Family.

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 any thing 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 severally for the tax assessed on the total income received by or on behalf of the joint family as such.

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

26. (1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted at the time of making the assessment :

Change in Constitution
of a Firm.

Provided that the incomes, profits and gains of the previous year shall, for the purpose of inclusion in the total income 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. (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.

Procedure in
Registration of Firms

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

27. 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

Cancellation of Assess-
ment when Cause is
Shown.

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. (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—
Penalty for Concealment of Income or Improper Distribution of Profits.

- (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 clauses (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 British India, 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 and super-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. 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. (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 sections 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

Appeal against Assessment under this Act

Notice of Demand.

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. (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.

Hearing of Appeal.

(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 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 enquiry 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 ;

- (g) confirm or vary such computation ;

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.

Appeals against Orders
of Appellate Assistant
Commissioner.

32. Omitted by section 87 of the Indian Income-Tax (Amendment) Act, 1939 (7 of 1939) from 25-1-1941.

33. (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.

Appeals against Order
of Appellate Assistant
Commissioner.

(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 order 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. (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:

Power of revision by
Commissioner.

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.

34. (1) If in consequence of definite information which has come into his possession the Income-tax Officer discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year, 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 the Income-tax Officer may, in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

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

Provided further that when the income, profits or gains concerned are income, profits or gains liable to assessment for a year ending prior to the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), or 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 were substituted.

(2) No order of assessment under section 23 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry, in any case to which clause (c) of sub-section (1) of section 28 applies, of eight years, and in any other case, of four years from the end of the year in which the income, profits or gains were first assessable :

Provided that nothing contained in this sub-section shall apply to a re-assessment made in pursuance of an order under section 31, section 33, section 66 or section 66A.

35. (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 Commissioner, 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 :

Rectification of
Mistake.

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. 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.

Tax to be calculated
to nearest Anna.

37. 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 commissions for the examination of witnesses, and any proceedings 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. The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

- (1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses;
- (2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses,
- (3) require any 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.

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

CHAPTER V

Liability in Special Cases

40. (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 British India 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, or is in receipt 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, and gains and all the provisions of this Act shall apply accordingly.

41. (1) In the case of income, profits or gains chargeable under this Act which * * * the Courts of Wards, the Administrators-General, the Official Trustee 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 :

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 so 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. (1) All income, profits or gains accruing or arising, whether directly or indirectly, through or from any business connection in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any money lent at interest and brought into British India in cash or in kind, shall be deemed to be income accruing

Non-Residents.

or arising within British India, and where the person entitled to the income, profits or gains is not resident in British India, 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 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 British India, the income-tax so chargeable may be recovered by deduction under any of the provisions of section 18 and that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come within British India :

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 so 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 British India. * * * * * carries on business with a person resident in British India, 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 British India, the profits and gains of the business deemed under this section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in British India.

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

Agent to include persons
treated as such,

Provided that where transactions are carried on in the ordinary course of business through a broker in British India in such circumstances that the broker 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 is carrying on such transactions in the ordinary course of his business and not as a principal, such first mentioned 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.

44. 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.

Liability in case of a discontinued Firm or Association.

CHAPTER VA.

Special provisions relating to certain classes of Shipping.

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

Liability to Tax of Occasional Shipping.

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

Return of Profits and Gains.

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

(3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and

such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

44C. 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. (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 British India, 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 British India, 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 purposes 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 British India, 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 purpose 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 British India 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 the 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 obligations 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 British India shall be treated as if it were resident out of British India 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 on 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. (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 pur-

poses of this Act the profits arising from or loss sustained in the business.

(4) Sub-section (3) shall have 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 stocks 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 rights, notwithstanding any difference in the total nominal 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. (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 had 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 subsection 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 44 E 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 purposes 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. Any amount specified as payable in a notice of demand under subsection (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 British India in a country the laws of which prohibit or restrict the remittance of money to British India, 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 British India, 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 British India if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalized or not has been brought into British India in any form.

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

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

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

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount * * * have 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 province, the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

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

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

47. 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 arrears of tax.

CHAPTER VII.

Refunds.

48. (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 any relief other or greater than that relief or 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.

General Power to make Refunds.

48A. Repealed by Act 7 of 1939, Section 58.

49. (1) If any person who has paid by deduction under section 18 or otherwise Indian income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid by deduction or otherwise United Kingdom income-tax for the corresponding year in respect of the same part of

Refund in respect of United Kingdom Income-Tax

his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, (10 & 11 Geo. 5, c. 18) ; is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section :

Provided that in no case shall the rate at which such refund is calculated exceed half the Indian rate of tax appropriate to the income of the person entitled to relief.

(2) In sub-section (1)—

(a) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act ;

(b) the expression "Indian rate of tax" means the amount of Indian income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act, but before deduction of any relief due to him under this section, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of this Act, added to the amount of Indian supertax before deduction of any relief due to the claimant under this section divided by his total income ;

(c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts ;

(d) the expression "appropriate rate of United Kingdom income-tax" has the meaning assigned to that expression in section 27 of the Finance Act, 1920, (10 & 11 Geo. 5, c. 18), as amended by the Finance Act, 1927.

49A. (1) The Central Government may, by notification in the Official Gazette, make provision for the granting of relief in respect of income on which has been paid both income-tax (including super-tax) under this Act and Dominion 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 Indian State or in any part of His Majesty's Dominions (other than 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 British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

49B. 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 British India or elsewhere, such person shall be deemed in respect of such

Relief in respect of
Indian State and
Dominion Income-Tax.

Income-Tax on Com-
pany's dividend
deemed to have been
paid by Shareholder.

dividend himself to have paid income-tax (exclusive of super-tax) at the rate applicable to the total income of a 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. (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 or is deemed to have been 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. If any person who has paid by deduction or otherwise Indian income-tax for any year in respect of any income arising without British India in a country the laws of which do not provide for any relief in respect of income-tax charged in British India 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. 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 to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

49F. 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,

Relief granted to a Company to be deemed relief Granted to Shareholder.

Relief in respect of Tax charged in Country not providing for Relief in respect of British Indian Income-Tax.

Power to set off amount of Refunds against Tax remaining payable.

Power of Representative of Deceased person or person disabled to make Claim on his behalf.

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. 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 British India :

Limitation of Claims
for Refund,

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 (11) 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.

Appeal against refusal
of Refund,

50A. Omitted by Section 62 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939).

CHAPTER VIII.

Offences and Penalties.

Failure to make pay-
ments or deliver
Returns or Statements
or allow Inspection,

51. If a person fails without reasonable cause or excuse—

- (a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46 ;
- (b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished ;
- (c) to furnish in due time any of the returns mentioned in section 19A, section 20A, section 21, 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. If a person makes a statement in a verification mentioned in section 19A or section 20A or section 21 or section 22 or sub-section (2) of section 26A 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.

False Statement in Declaration,
Prosecution to be at Instance of Inspecting Assistant Commissioner.

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

(2) The Inspecting Assistant Commissioner may either before or after the institution of proceedings compound any such offence.

54. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (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 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 to the Auditor General of India for the purpose of enabling him to discharge his functions under section 144 of the Government of India Act, 1935; or

- (f) of any such particulars to any officer appointed by the 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 Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry ; 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 functions referred to in that sub-section ; or
- (h) of any such particulars occasioned by the lawful exercise by a public servant of his power under the Indian Stamp Act, 1899 (II of 1899), to impound an insufficiently stamped document ; or
- (i) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with British 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 of this Act to be given ; or
- (j) of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income ; or
- (k) of such facts, to any authority exercising powers under the Sea Customs Act, 1878 (VIII of 1878), or any Act of the Central Legislature 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.

(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. 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 Act of the Central Legislature:

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 profits 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.

56. 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. *Omitted by section 69 of the Indian Income-tax (Amendment) Act, 1939; (7 of 1939).*

58. (1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 3, the second proviso to sub-section (1) of section 7, the second and third provisos to section 8, clauses (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-sections (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 classes of Provident Funds.

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

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

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

(2) 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 a 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. (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—

Conditions to be
satisfied by a Recog-
nised Provident Fund.

(a) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India :

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 British India 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 proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year and credited to the employee's individual account in the fund :

Provided that an employee who retains his employment while serving in His Majesty's Forces 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 Personal) 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 His Majesty's Forces, or been so taken into or employed in the national service, contribute to the fund during his service in His Majesty's Forces 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 His Majesty's Forces 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 accumulations, and of securities purchased therewith, and of no other sums.

(e) The fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable save with the consent of all the beneficiaries.

(f) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

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

(g) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.

(h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the Central Government may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

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

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

58D. Subject to any rules which the Central Government may make in

Power to relax restrictions of Employer's Contributions in certain cases.

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 large 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. 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. (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 exempt 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. (1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933 (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 sums 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. 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 (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. (1) Where recognition is accorded to a provident fund with existing balances an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

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

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

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

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

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

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

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

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

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

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

- (a) prescribing the statements and other information to be submitted with an application for recognition ;
- (b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company ,
- (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund ;
- (d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn , and

- (e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

Application of this Chapter.

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

CHAPTER IXB.

Special Provisions relating to certain classes of Superannuation Funds.

Definitions.

58N. 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.

58 O. (1) The Central Board of Revenue may accord approval to any

Approval and withdrawal of approval.

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. In order that a superannuation fund may receive and retain approval, the following conditions shall be satisfied, namely :—

Conditions for Approval.

- (a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in British India,
- (b) the fund shall have for its sole purpose the provision 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 such 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 British India.

58Q. (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. Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee 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. (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.

Treatment of repaid Contributions.

(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. 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.

Deduction from pay of, and contributions on behalf of Employee to be included in return under Section 21.

58U. 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—

Liabilities of Trustees on cessation of approval of Fund.

(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. 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:—

Particulars to be furnished in respect of Superannuation Funds.

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

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

- (a) prescribe the manner in which, and the procedure by which, the income, profits and gains shall be arrived at in the case of—
 - (i) incomes derived in part from agriculture and in part from business,

* * * *

- (ii) persons residing out of British India ;
- (b) prescribe the procedure to be followed on applications for refunds ;
- (c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920 (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) provide for any matter which by this Act is to be prescribed.

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

- (a) prescribe methods by which an estimate of such income, profits and gains may be made ; and

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

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

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

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

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

Power to make exemptions, etc.

(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.

61. (1) Any assessee, who is entitled or required to attend before the Appellate 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).

Appearance by Authorised Representative.

(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 British India ;
- (iii) "accountant" means a registered accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditors 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, 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. A receipt shall be given for any money paid or recovered under this Act.

Receipts to be given.

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

Service of Notices.

(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. (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

Place of Assessment.

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 provisions 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) whereby 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 by him 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 such assessment began before or after the 1st day 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. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Indemnity.

66. (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 received notice 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 the 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 questions of law raised thereby and shall deliver its judgment thereon 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 His Majesty in Council, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council.

(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 * * * British Baluchistan, the High Court of Judicature at Lahore ;

(b) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad ; and

(c) in relation to the province of Coorg, the High Court of Judicature at Madras.

66A. (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, (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 :

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

Provided that wherein any reference heard by the Bench of the Court of the Judicial Commissioner of the North-West Frontier Province, a difference of opinion arises between the Judicial Commissioner and the Judge of the said Court, the opinion of the Judicial Commissioner shall prevail.

(2) An appeal shall lie to His Majesty in Council from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

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

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

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

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

(5) Nothing in the section shall be deemed—

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

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

Bar of Suits in Civil Court.

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

Computation of Periods of Limitation.

67B. If on the 1st day of April in any year provision has not yet been made by an Act of the Indian Legislature 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 Legislature, whichever is more favourable to the assessee, were actually in force.

Act to have effect pending legislative provision for charge of Income-tax.

68. (*Repeals*). *Repealed by the Repealing Act, 1927 (12 of 1927).*

(*Schedule.—Rules for the computation of the Profits and Gains of Insurance Business.*)

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. The 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 intervaluation 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) $7\frac{1}{2}$ 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 $7\frac{1}{2}$ 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 amounts to the extent to which they are paid out of or in respect of any surplus brought forward from a previous intervaluation 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 it 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 provisions 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 commissions) 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 of 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 British Indian premium income of the previous year.

8. The profits and gains of the British Indian branches of an insurance company not resident in British India, 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 British Indian premium income bears to its total premium income. For the purpose of this rule, the total world income of life insurance companies not resident in British India 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 British India.

9. These rules apply to the assessment of the profits of any business of insurance carried on by a mutual insurance association.

THE INDIAN FINANCE ACT, 1946.

Act No. VII of 1946

An Act to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April 1946.

Whereas it is expedient to fix the duty on salt manufactured in, or imported by land into, British India, to fix maximum rates of postage under the Indian Post Office Act, 1898 (VI of 1898), to continue, subject to certain modifications for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act 1942 (XII of 1942), to alter the duty of customs on cinematograph films, raw cotton and silver, to withdraw the duty of customs on raw cotton levied under the Cotton Fund Ordinance, 1942 (VIII of 1942), to impose a duty of customs on gold, to alter the duty of customs and the duty of excise on betelnuts, motor spirit, kerosene and mineral oils, to fix rates of income-tax and super-tax, and to make certain provisions relating to income-tax, super-tax and excess profits tax;

It is hereby enacted as follows :—

1. Short title and extent.—(1) This Act may be called the Indian Finance Act, 1946.

(2) It extends to the whole of British India.

* * * * *

11. Income-tax and super-tax.—(1) Subject to the provisions of sub-sections (3), (4), (5), (6) and (7),—

(a) income-tax for the year beginning on the 1st day of April 1946 shall be charged at the rates specified in Part I of the Schedule, and

(b) rates of super-tax for the year beginning on the 1st day of April 1946 shall, for the purposes of section 55 of the Indian Income-tax Act, 1922 (XI of 1922), be those specified in Part II of the Schedule.

(2) In making any assessment for the year ending on the 31st day of March 1947, there shall be deducted from the total income of an assessee, in accordance with the provisions of section 15A of the Indian Income-tax Act, 1922, an amount equal to—

(i) one-tenth of the earned income chargeable under the head “salaries” which is included in his total income, subject to a maximum of two thousand rupees, plus

(ii) one-fifth of the earned income other than the income chargeable under the head “Salaries” which is included in his total income :

Provided that the aggregate amount to be deducted under this sub-section shall not in any case exceed four thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March 1947,—

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head “Salaries” as reduced by the deduction for earned income appropriate thereto, or any income chargeable under the head “Interest on Securities,” or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an

amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1945, on his total income the same proportion as the amount of such inclusions bears to his total income ;

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions sub-section (2) of section 18 of the Indian Income-tax, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1945, on his total income the same proportion as the amount of such inclusion bears to his total income

(4) In making any assessment for the year ending on the 31st day of March 1947, where the total income of an assessee consists partly of earned income partly of unearned income, the super-tax payable by him shall be—

(i) on that part of the earned income, chargeable under the head "Salaries" to which clause (b) of sub-section (3) applies, the amount of super-tax computed in accordance with the provisions of that clause, plus.

(ii) on the remainder of the earned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of earned income the same proportion as such remainder bears to his total income, plus

(iii) on the unearned income, the amount which bears to the total amount of super-tax which would have been payable on his total income had it consisted wholly of unearned income the same proportion as the unearned income bears to his total income.

(5) Where the total income of an assessee referred to in paragraph A of Part I of the Schedule does not exceed six thousand rupees and includes any income to which clause (a) of sub-section (3) applies, the income-tax payable by the assessee on such inclusion as computed in accordance with the provisions of that clause shall be reduced by an amount representing one rupee for every complete unit of two hundred rupees of such inclusion as reduced by the amount of income, if any, exempt under the second proviso to sub-section (1) of section 7 section 15, and sub-section (1) of section 58F, of the Indian Income-tax Act, 1922:

Provided that the reduction to be made under this sub-section shall not in any case exceed two-fifths of the income-tax otherwise payable on such inclusion :

Provided further that if there is an incomplete unit of such inclusion amounting to one hundred rupees or more, it shall for the purposes of this sub-section be reckoned as a complete unit of two hundred rupees.

(6) In making any assessment for the year ending on the 31st day of March 1947,—

(a) where the total income of a company includes any profits and gains from life insurance business, the super-tax payable by the company shall be reduced by an amount computed at the rate of one anna in the rupee on that part of its total income which consists of such inclusion ;

(b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable

according to the rates applicable under the operation of the Indian Finance Act, 1942 (XII of 1942), on his total income the same proportion as the amount of such inclusion bears to his total income, so however that the aggregate of the taxes so computed in respect of such inclusion shall not in any case exceed the amount of tax payable on such inclusion at the rate of five annas in the rupee.

(7) In cases to which section 17 of the Indian Income-tax Act, 1922 applies the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of this section and in accordance, where applicable, with the provisions of sub-sections (3), (4), (5) and (6) of this section.

(8) For the purposes of making any deduction of income-tax in the year beginning on the 1st day of April 1946, under sub-section (2) or sub-section (2B) of section 18 of the Indian Income-tax Act, 1922, from any earned income chargeable under the head "Salaries," the estimated total income of the assessee under this head shall, in computing the income-tax to be deducted, be reduced by an amount equal to one-fifth of such earned income but not exceeding in any case four thousand rupees

(9) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act 1922, and the expression "earned income" has the meaning assigned to it in clause (6AA) of section 2 of that Act

(10) If any provision is made in the Indian Income-tax Act, 1922, for the allowance of expenditure on scientific research related to the business carried on by an assessee, then any such expenditure incurred by him in the previous year for the assessment for the year ending on the 31st day of March 1946 shall for the purposes of that provision and in accordance therewith, be deemed to be expenditure incurred in the previous year for the assessment for the year ending on the 31st day of March 1947, and shall be added to the amount of such expenditure, if any, in that previous year.

(11) Any sum being excess profits tax repaid in respect of any chargeable accounting period under the provisions of section 10 of the Indian Finance Act, 1942, or of section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943) shall be deemed to be income for the purposes of the Indian Income-tax Act, 1922, and shall, notwithstanding the provisions of section 34 of that Act, be treated as income of the previous year which constitutes or includes the chargeable accounting period in respect of which the said sum is repayable :

Provided that any such sum repaid in respect of any such profits which are also assessable to excess profits tax under the law in force in the United Kingdom shall be treated, for the purpose of assessment to income-tax and super-tax, as income of the previous year during which the repayment is made.

(12) The Income-tax Officer shall calculate the amount of income-tax and super-tax payable in respect of each sum referred to in sub-section (11), and such amount shall be deducted from the said sum at the time that it is repaid, and where the regular assessment proceedings for the appropriate assessment year are not complete, the tax so deducted shall be treated as a payment of income-tax or super-tax, as the case may be, for the purposes of sub-section (5) of section 18 of the Indian Income-tax Act, 1922.

(13) Any person objecting to the amount of a deduction made under sub-section (12) may appeal to the Appellate Assistant Commissioner within thirty days of the receipt of the repayment order, and the provisions of sections 30,

31 and 33 of the Indian Income-tax Act, 1922, shall apply as if such appeal were an appeal under the first-mentioned section.

(14) Where under the provisions of sub-section (2) of section 12 of the Excess Profits Tax Act, 1940 (XV of 1940), excess profits tax payable under the law in force in the United Kingdom has been deducted in computing for the purposes of income-tax and super-tax the profits and gains of any business, the amount of any repayment under sub-section (1) of section 28 of the Finance Act, 1941 (4 & 5 Geo. 6, c. 30), as amended by section 37 of the Finance Act, 1942 (5 & 6 Geo. 6, c. 21), in respect of those profits, shall be deemed to be income for the purposes of the Indian Income-tax Act, 1922, and shall, for the purpose of assessment to income-tax and super-tax, be treated as income of the previous year during which the repayment is made.

THE SCHEDULE

(See Section 11)

PART I

RATES OF INCOME-TAX

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

	RATE.
1. On the first Rs. 1,500 of total income ..	<i>Nil.</i>
2. On the next Rs. 3, 500 of total income ..	One anna in the rupee.
3. On the next Rs. 5,000 of total income ..	Two annas in the rupee.
4. On the next Rs. 5,000 of total income ..	Three and a half annas in the rupee.
5. On the balance of total income	Five annas in the rupee.

Provided that—

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs 2,000 ;

(ii) the income-tax payable shall in no case exceed half the amount by which the total income (before deduction of the said allowance, if any, for earned income) exceeds Rs 2,000 ;

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

(a) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 2,000 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 in this Schedule,

whichever is less.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	RATE.
On the whole of total income	Five annas in the rupee.

PART II

RATES OF SUPER-TAX

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraph B or paragraph C or paragraph D of this Part applies—

	RATE, IF INCOME WHOLLY EARNED.	RATE, IF INCOME WHOLLY UNEARNED.
1. On the first Rs. 25,000 of total income.	<i>Nil.</i>	<i>Nil.</i>
2. On the next Rs. 10,000 of total income.	Two annas in the rupee.	Three annas in the rupee.
3. On the next Rs. 10,000 of total income.	Three annas in the rupee.	Four annas in the rupee.
4. On the next Rs. 15,000 of total income.	Four annas in the rupee.	Five annas in the rupee.
5. On the next Rs. 20,000 of total income.	Five annas in the rupee.	Six annas in the rupee.
6. On the next Rs. 30,000 of total income.	Six annas in the rupee.	Seven annas in the rupee.
7. On the next Rs. 40,000 of total income.	Seven annas in the rupee.	Eight annas in the rupee.
8. On the next Rs. 50,000 of total income.	Eight annas in the rupee.	Nine annas in the rupee.
9. On the next Rs. 50,000 of total income.	Nine annas in the rupee.	Nine and a half annas in the rupee.
10. On the next Rs. 1,00,000 of total income.	Nine and a half annas in the rupee.	Ten annas in the rupee.
11. On the next Rs. 1,50,000 of total income.	Ten annas in the rupee.	Ten and a half annas in the rupee.
12. On the balance of total income.	Ten and a half annas in the rupee.	Ten and a half annas in the rupee.

B.—In the case of every local authority—

RATE.

On the whole of total income One anna in the rupee

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—

RATE.

- | | |
|---|------------------------|
| 1. On the first Rs. 25,000 of total income .. | <i>Nil.</i> |
| 2. On the balance of total income | One anna in the rupee. |

D.—In the case of every company—

RATE.

On the whole total income One anna in the rupee.

and in addition, in respect of that part of the total income (as reduced by the amount of dividends payable of a fixed rate) which does not exceed the amount of dividends, not being dividends payable at a fixed rate, declared in British India in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March 1947,—

on the amount by which such part—

RATE.

- | | |
|--|---------------------------|
| (a) exceeds 30 per cent., but does not exceed 40 per cent., of the total income as so reduced. | Two annas in the rupee. |
| (b) exceeds 40 per cent., but does not exceed 45 per cent., of the total income as so reduced. | Three annas in the rupee. |
| (c) exceeds 45 per cent., but does not exceed 50 per cent., of the total income as so reduced. | Four annas in the rupee. |
| (d) exceeds 50 per cent., but does not exceed 55 per cent., of the total income as so reduced. | Five annas in the rupee. |
| (e) exceeds 55 per cent., but does not exceed 60 per cent., of the total income as so reduced. | Six annas in the rupee. |
| (f) exceeds 60 per cent., of the total income as so reduced. | Seven annas in the rupee. |

Provided that—

(i) no additional super-tax shall be payable where such part is less than, or equal to, five per cent. on the capital of the company,

(ii) where such part is more than five per cent. on the capital of the company, the additional super-tax payable shall be reduced by the amount of additional super-tax which would, but for the provisions of clause (i) of this proviso, have been payable had such part been equal to five per cent. on the capital of the company,

(iii) where any dividends (not being dividends payable at a fixed rate) have been declared before the 1st day of March 1946 in respect of the whole or part of the previous year for the assessment for the year ending on the 31st day of March 1947, and the amount of super-tax computed at the rates set out in this paragraph exceeds the amount of super-tax which would be payable by the company at the rate specified in the Indian Finance Act, 1945, such proportion of the amount of super-tax computed under this paragraph as the amount of dividends declared before the 1st day of March 1946 bears to the total amount of dividends declared in respect of the said previous year (not being dividends payable at a fixed rate) shall be so reduced as not to exceed the same proportion of the super-tax computed at the rate specified in the Indian Finance Act, 1945;

(iv) the additional super-tax shall be payable only by a company in which the public are substantially interested within the meaning of the Explanation

to sub-section (1) of section 23A of the Indian Income-tax Act, 1922, or a subsidiary company of such a company where the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof

Explanation.—For the purposes of this paragraph,—

(a) the expression “capital of the company” shall be deemed to mean the paid-up share capital at the beginning of the previous year for the assessment for the year ending on the 31st day of March 1947 (other than capital entitled to a dividend at a fixed rate) plus any reserves other than depreciation reserves and reserves for bad or doubtful debts at the same date as diminished by the amount on deposit on the same date with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943;

(b) the expression “dividend” shall be deemed to include any distribution included in the expression “dividend” as defined in clause (6A) of section 2 of the Indian Income-tax Act, 1922, and any such distribution made during the year ending on the 31st day of March 1947 shall be deemed to have been made in respect of the whole or part of the previous year;

(c) where any portion of the profits and gains of a company is not included in its total income, by reason of such portion being exempt from tax under any provision of the Indian Income-tax Act, 1922, the capital of the company, the total amount of dividends and the amount of dividends payable at a fixed rate shall each be deemed to be the proportion thereof that the total income of the company bears to its total profits and gains.

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