

Insertion of  
new section  
35A in Act  
V of 1908.

2. In Part I of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code), after section 35 the following section shall be inserted, namely:—

[See the Unrepealed Central Acts, Vol. V.]

Amendment  
of section  
104, Act V  
of 1908.

3. In sub-section (r) of section 104 of the said Code—

(i) after clause (f) the following clause shall be inserted, namely:—

[See the Unrepealed Central Acts, Vol. V.]

(ii) after clause (i) the following proviso shall be inserted, namely:—

[See the Unrepealed Central Acts, Vol. V.]

Amendment  
of Order XLI,  
Schedule I,  
Act V of  
1908.

4. To rule 33 of Order XLI of the First Schedule to the said Code, the following proviso shall be added, namely:—

[See the Unrepealed Central Acts, Vol. V.]

Amendment  
of section 24,  
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1887.

5. In section 24 of the Provincial Small Cause Courts Act, 1887, for IX of 1887, the words and figures "section 588, clause (g) of the Code of Civil Procedure" the words and figures "clause (ff) or clause (h) of sub-section (r) of section 104 of the Code of Civil Procedure, 1908," shall be substituted; and after the words "District Court," the following words shall be added, namely:—

[See the Unrepealed Central Acts, Vol. III.]

## THE INDIAN INCOME-TAX ACT, 1922.

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ACT No. XI OF 1922.<sup>1</sup>

[5th March, 1922.]

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

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

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

<sup>2</sup>[(2) It extends to the whole of British India, including <sup>3</sup>\* \* 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 <sup>4</sup>\* \* the Central Government in that behalf, and to all other servants of the Crown in the said States and areas.] Short title, extent and commencement.

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

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

(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 <sup>5</sup>[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 :

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1921, Pt. V, p. 159 ; and for Report of Joint Committee, see *ibid.*, 1922, Pt. V, p. 31.

This Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941) and has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch. and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

<sup>2</sup> Subs. by the A. O. 1937 for the original sub-section.

<sup>3</sup> The words “ British Baluchistan and ” rep., with effect from 15th August, 1947, by G. G. O. 31, dated 10th December, 1947, see Gazette of India, 1947, Extraordinary, p. 1330.

<sup>4</sup> The words “ the Crown Representative or ” rep., with effect from 15th August, 1947, *ibid.*

<sup>5</sup> Subs. by the A. O. 1937 for “ officers of Govt.”.

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) <sup>1</sup>[" Appellate] Assistant Commissioner " means a person appointed to be an <sup>1</sup>[Appellate] Assistant Commissioner of Income-tax under section 5 ;

<sup>2</sup>[(3a) " British India " means, as respects any period before the 15th day of August, 1947, the territories then referred to as British India but including Berar, and as respects any period after the 14th day of August, 1947, the territories for the time being comprised in the Provinces of India ;]

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

<sup>3</sup>[(4a) " capital asset " means property of any kind \* \* held by an assessee, whether or not connected with his business, profession or vocation, but does not include—

(i) any stock-in-trade, consumable stores or raw materials held for the purposes of his business, profession or vocation ;

(ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him;]

<sup>5</sup>[(iii) any land from which the income derived is agricultural income;]

<sup>6</sup>[(4b)] " the Central Board of Revenue " means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924].

IV of 1924.

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

~~<sup>7</sup>[(5A) " company " means a company as defined in the Indian Companies Act, 1913 or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, 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;]~~

VII of 1913.

*(6) Director - - -*

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 2.

<sup>2</sup> Ins. with effect from 15th August, 1947, by G. G. O. 31 dated 10th December, 1947, see Gazette of India, 1947, Extraordinary, p. 1330.

<sup>3</sup> Ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 2, with effect from 31st March, 1947.

<sup>4</sup> The words and brackets " (other than agricultural land) " rep. by the Income-tax and Business Profits Tax (Amendment) Act, 1947 (44 of 1947), s. 2, with effect from 1st April, 1947.

<sup>5</sup> Ins. by s. 2, *ibid.*, with effect from 1st April, 1947.

<sup>6</sup> Ins. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

<sup>7</sup> Cl. (4a) was renumbered (4b) by Act 22 of 1947, s. 2, with effect from 31st March, 1947.

<sup>8</sup> Subs. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 2, for the original cl., as amended by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch.

<sup>1</sup>[(6a) "dividend" includes—

- (a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;
- (b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not ;
- (c) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company :

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included ; and

- (d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not :

Provided that 'dividend' does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (c) or (d).

<sup>2</sup>[Provided further that the expression 'accumulated profits', wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946 ;]

<sup>3</sup>[(6aa) "earned income" means any income of an assessee who is an individual, Hindu undivided family, unregistered firm or other association of persons not being a company, a local authority, a registered firm or a firm treated as registered under clause (b) of sub-section (5) of section 23—

- (a) which is chargeable under the head "Salaries" ; or
- (b) which is chargeable under the head "Profits and gains of business, profession or vocation" where the business, profession or vocation is carried on by the assessee or, in the case of a firm, where the assessee is a partner actively engaged in the conduct of the business, profession or vocation ; or
- (c) which is chargeable under the head "Other sources" if it is immediately derived from personal exertion or represents a pension or superannuation or other allowance given to the assessee in respect of his past services or the past services of any deceased person ;

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 2.

<sup>2</sup> Subs. by the Income-tax and Business Profits Tax (Amendment) Act, 1947 (44 of 1947), s. 2, with effect from 1st April, 1947, for the former proviso which had been subs. with effect from 31st March, 1947, by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 2, for the Explanation.

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Ordinance, 1945 (9 of 1945), s. 2, with effect from 28th April, 1945 for indefinite period.

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 ;]

<sup>1</sup>[<sup>2</sup>(6b)] "firm", "partner" and "partnership" have the same meanings respectively as in <sup>3</sup>[the Indian Partnership Act, 1932] ; <sup>4</sup>[provided IX of 1932. that the expression 'partner' includes any person who being a minor has been admitted to the benefits of partnership] ;

<sup>4</sup>[(6c) "income" includes anything included in 'dividend' as defined in clause (6a) and anything which under Explanation 2 to sub-section (1) of section 7 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of section 10 <sup>5</sup>[any capital gain chargeable according to the provisions of section 12B] and the profits of any business of insurance carried on by a <sup>6</sup>[mutual insurance association] computed in accordance with Rule 9 in the Schedule],

<sup>4</sup>[(6d) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under section 5] ;

<sup>6</sup>(7) "Income-tax Officer" means a person appointed to be an Income-tax Officer under section 5 ;

<sup>7</sup>[(7a) "Indian company" means a company as defined in the Indian Companies Act, 1913, the registered office of which is situate in British India ;]

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

<sup>8</sup>(9) "person" includes a Hindu undivided family <sup>4</sup>[and a local authority] ;

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

(11) "previous year" means <sup>4</sup>[in respect of any separate source of income, profits and gains]—

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

<sup>9</sup>[Provided that where an assessee has once been assessed in respect of

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 2.

<sup>2</sup> Cl. (6a) was relettered (6b) by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 2.

<sup>3</sup> Subs. by s. 2. *ibid.*, for "the Indian Contract Act, 1872".

<sup>4</sup> Ins. by s. 2, *ibid.*

<sup>5</sup> Ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947, (22 of 1947), s. 2.

<sup>6</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 2, for "mutual insurance company".

<sup>7</sup> Ins. by the Indian Finance Act, 1948 (20 of 1948), s. 8.

<sup>8</sup> Subs. by the A. O. 1937 for "the L. G.".

<sup>9</sup> Subs. by Act 7 of 1939 s. 2, for the original proviso.

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 <sup>1</sup>[Central Board of Revenue] or by such authority as the Board may authorise in this behalf ; <sup>2</sup>[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 <sup>3</sup>[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;

<sup>4</sup>[(14) "registered firm" means a firm registered under the provisions of section 26A] ;

(15) "total income" means total amount of income, profits and gains <sup>5</sup>[referred to in sub-section (1) of section 4] computed in the manner laid down in <sup>6</sup>[this Act], and

<sup>1</sup> Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., for "Board of Inland Revenue".

<sup>2</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 2.

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1924 (11 of 1924), s. 2.

<sup>4</sup> Subs. by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 2, for the original cl., with effect from 1st April, 1930.

<sup>5</sup> Subs. by Act 7 of 1939, s. 2, for "from all sources to which this Act applies".

<sup>6</sup> Subs. by s. 2, *ibid.*, for "section 16".

## (Chapter I.—Charge of Income-tax.)

<sup>1</sup>["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 <sup>2</sup>[does not apply and except any capital gain which is not includible in the total income of an assessee ;]]

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

## CHAPTER I.

## CHARGE OF INCOME-TAX.

Charge of  
Income-tax.

3. Where any <sup>3</sup>[Act of the ~~Central~~ <sup>Central</sup> Legislature] enacts<sup>4</sup> 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 <sup>6</sup>[the total income] of the previous year of every <sup>7</sup>[individual, Hindu undivided family, <sup>8</sup>[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]].

Application  
of Act.

4. <sup>9</sup>[(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:

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 2.

<sup>2</sup> Subs. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 2, with effect from 31st March, 1947, for "does not apply; and".

<sup>3</sup> Subs. by the A. O. 1937 for "Act of the Indian Legislature".

<sup>4</sup> For such enactments, see the annual Indian Finance Acts.

<sup>5</sup> The words "applicable to the total income of an assessee" rep. by Act 7 of 1939, s. 3.

<sup>6</sup> Subs. by s. 3, *ibid.*, for "all income, profits and gains".

<sup>7</sup> Subs. by the Indian Income-tax (Amendment) Act, 1924 (11 of 1924), s. 3, with effect from 1st April, 1923, for "individual company, firm and Hindu undivided family".

<sup>8</sup> Subs. by Act 7 of 1939, s. 3, for "company, firm and other association of individuals".

<sup>9</sup> Subs. by Act 7 of 1939, s. 4, for the former sub-sections (1) to (2).

## (Chapter I.—Charge of Income-tax.)

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. *Provided - - - -*

*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 <sup>1</sup>[by an Indian company] 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.

*Explanation 4*  
(2) For the purposes of sub-section (1), where a husband is not 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) <sup>2</sup>[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;

<sup>3</sup>[(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;

<sup>1</sup> Ins. by the Indian Finance Act, 1948 (20 of 1948), s. 8.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 4, for "This Act shall not apply to the following classes of income".

<sup>3</sup> Ins. by s. 4, *ibid.*

## (Chapter I.—Charge of Income-tax.)

- (iii) The income of local authorities <sup>1</sup>[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, <sup>2</sup>[1925] XIX of 1925, applies, <sup>3</sup>[and any capital gains of the Fund arising from the sale, exchange or transfer of such securities] \* \* \* \* \* ;
- (v) 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 ;
- (vi) Any receipts <sup>3</sup>[not being capital gains chargeable according to the provisions of section 12B and] not being receipts arising from business or the exercise of a profession, vocation or occupation which are of a casual and non-recurring nature or are not by way of addition to the remuneration of an employee ;
- (viii) Agricultural income ;
- <sup>6</sup>[(ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of section 58A] ;
- <sup>7</sup>[(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

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 4.

<sup>2</sup> Subs. by s. 4, *ibid.*, for " 1897 ".

<sup>3</sup> Ins. by the Income-tax and Excess Tax (Amendment) Act, 1947 (22 of 1947), s. 3, with effect from 31st March, 1947.

<sup>4</sup> Certain words rep. by the Indian Income-tax (Amendment) Act, 1924 (11 of 1924), s. 4.

<sup>5</sup> Cl. (v) rep. by Act 7 of 1939, s. 4.

<sup>6</sup> Added by the Indian Income-tax (Provident Funds Relief) Act, 1929 (12 of 1929), s. 2, with effect from 15th March, 1930.

<sup>7</sup> Ins. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 3.

## (Chapter I.—Charge of Income-tax.)

representative referred to 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 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] ;

<sup>1</sup>[(xii) Any income chargeable under the head "Income from property" in respect of a building the erection of which is begun and completed <sup>1943</sup> between the 1st day of April, 1946 and the 31st day of March <sup>1950</sup> [1950] (both dates inclusive), for a period of two years from the date of such completion.]

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, <sup>3</sup>[but nothing contained in clause (i), clause (ia) or clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not ensure for the benefit of the public].

<sup>4</sup>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 ; <sup>5</sup>[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 ;]

Residence in  
British  
India.

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1946 (8 of 1946), s. 2, with effect from 4th May, 1946.

<sup>2</sup> Subs. by the Indian Finance Act, 1948 (20 of 1948), s. 8, for "1948".

<sup>3</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 4.

<sup>4</sup> Ss. 4A and 4B were ins. by s. 5, *ibid.*

<sup>5</sup> Added by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 4.

*(Chapter I.—Charge of Income-tax. Chapter II.—Income-tax Authorities.)*

- (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 <sup>1</sup>[account not being taken in either case of income chargeable under the head " capital gain "].

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 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.

Income-tax  
authorities.

<sup>2</sup>[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 <sup>3</sup>\* \* \* as many Appellate or, Inspecting Assistant Commissioners of Income-tax and Income-tax Officers as it thinks fit.

<sup>1</sup> Added by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 4, with effect from 31st March, 1947.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 6, for the former section.

<sup>3</sup> The words " for any area " rep. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 3, with effect from 1st April, 1939.

## (Chapter II.—Income-tax Authorities.)

(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 <sup>1</sup>[or of such incomes or classes of income or] in respect of such areas as the Central Board of Revenue may direct <sup>2</sup>[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 <sup>1</sup>[or of such incomes or classes of income or] in respect of such areas as the Commissioner of Income-tax may direct <sup>3</sup>[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.

574 (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 <sup>4</sup>[or such area] as may be specified in the notification, and thereupon the functions so specified shall cease <sup>5</sup>[\* \* \* to be performed in respect of the specified classes of persons or classes of income <sup>6</sup>[or area] by the other authorities appointed under sub-sections (2) and (3).

(7) Assistant Commissioners of Income-tax and Income-tax Officers shall,

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 3, for "and of such incomes or classes of income and", with effect from 1st April, 1938.

<sup>2</sup> Subs. by s. 3, *ibid.*, for "and, where two or more Appellate Assistant Commissioners have been appointed for the same area", with effect from 1st April, 1939.

<sup>3</sup> Subs. by s. 3, *ibid.*, for "and, where two or more Inspecting Assistant Commissioners of Income-tax or Income-tax Officers have been appointed for the same area", with effect from 1st April, 1939.

<sup>4</sup> Subs. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 3, for "and for such area", with effect from 1st April, 1939.

<sup>5</sup> The words "within the specified area" rep. by s. 3, *ibid.*, with effect from 1st April, 1939.

<sup>6</sup> Ins. by s. 3, *ibid.*, with effect from 1st April, 1939.

(Chapter II.—Income-tax Authorities. Chapter IIA.—Appellate Tribunal.)

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.

<sup>1</sup>[(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 reissue of any notice already issued by the Income-tax Officer from whom the case is transferred.] *Exp. clause*

<sup>2</sup>(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.]

## <sup>2</sup>[CHAPTER IIA.]

### APPELLATE TRIBUNAL.

The Appellate Tribunal.

<sup>3</sup>[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 :

<sup>4</sup>[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. *ordinarily*

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 3.

<sup>2</sup> Ins. by s. 4, *ibid.*

<sup>3</sup> S. 5A was ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 85.

<sup>4</sup> Added by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 5.

(Chapter IIA.—Appellate Tribunal. Chapter III.—Taxable Income.)

(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 <sup>1</sup>[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:—

- (i) Salaries ;
- (ii) Interest on securities ;
- <sup>2</sup>[(iii) Income from property ;
- (iv) Profits and gains of business, profession or vocation ;
- (v) Income from other sources ;]
- <sup>3</sup>[(vi) Capital gains.]

7. (1) The tax shall be payable by an assessee under the head <sup>Salaries.</sup> "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits <sup>4</sup>\* \* \* in lieu of, or in addition to, any salary or wages, <sup>5</sup>[which are due to him from, whether paid or not, or are paid by or on behalf of, the Crown,] a local

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 4, for "place".

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 7, for original cls. (iii), (iv), (v) and (vi).

<sup>3</sup> Added by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 5, with effect from 31st March, 1947.

<sup>4</sup> The words "received by him" rep. by Act 7 of 1939, s. 8.

<sup>5</sup> Subs. by s. 8, *ibid.*, for "which are paid by or on behalf of the Crown". The words "the Crown" had been subs. by the A. O. 1937 for "Govt."

## (Chapter III.—Taxable Income.)

authority, a company or any other public body or association, or <sup>1</sup>[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 <sup>2</sup>[further] that the tax shall not be payable in respect of any sum <sup>3</sup>[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 :

<sup>4</sup>[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] ;

<sup>5</sup>[Explanation <sup>6</sup>[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.]

<sup>7</sup>[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

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 8 for " by or on behalf of any private employer "

<sup>2</sup> Ins. by s. 8, *ibid.*

<sup>3</sup> Subs. by the A. O. 1937 for " deducted under the authority of the Govt., from the salary of any individual "

<sup>4</sup> Ins. by Act 7 of 1939, s. 8.

<sup>5</sup> Added by the Indian Income-tax (Amendment) Act, 1923 (15 of 1923), s. 2.

<sup>6</sup> The Explanation was numbered " 1 " by Act 7 of 1939, s. 8.

<sup>7</sup> Added by s. 8, *ibid.*

<sup>8</sup> Certain words rep. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 2.

## (Chapter III.—Taxable Income.)

or any servant of His Majesty in any part of India <sup>1</sup>[by or on behalf of the Crown] or by a local authority established <sup>2</sup>[in the exercise of the powers of <sup>3</sup>\* \* 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 on any security of the <sup>4</sup>[Central Government] or of a <sup>5</sup>[Provincial Government], or on debentures or other securities for money issued by or on behalf of a local authority or a company: Interest on securities.

<sup>6</sup>[Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee] <sup>7</sup>[or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without 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 <sup>6</sup>[further] that no income-tax shall be payable on the interest receivable on any security of the <sup>4</sup>[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 <sup>5</sup>[Provincial Government] issued income-tax free shall be payable by that <sup>5</sup>[Provincial Government].

9. (1) The tax shall be payable by an assessee <sup>8</sup>[under the head Property. "Income from property" ] in respect of the *bonâ fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of <sup>9</sup>[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:

<sup>1</sup> Subs. by the A. O. 1937 for "by Govt."

<sup>2</sup> Subs. by the A. O. 1937 for "by the G. G. in C."

<sup>3</sup> The words "the Crown Representative or" rep. with effect from 15th August, 1947, by the G. G. O. 31, dated 10th December, 1947, see Gazette of India, 1947, Extraordinary, p. 1330.

<sup>4</sup> Subs. by the A. O. 1937 for "G. of I."

<sup>5</sup> Subs. by the A. O. 1937 for "L. G."

<sup>6</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 3.

<sup>7</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 9.

<sup>8</sup> Subs. by Act 7 of 1939, s. 10 for "under the head 'Property'".

<sup>9</sup> Subs. by s. 10, *ibid.*, for "his business".

## (Chapter III.—Taxable Income.)

- (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 ; *Provided* — — —
- (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction ;
- <sup>1</sup>[(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 ;
- <sup>2</sup>[(vii) in respect of vacancies, that part of <sup>3</sup>[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 <sup>3</sup>[the annual value] appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied ;]

\* \* *Explanation* \* \* \*

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

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

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 10 for the former cl. which had been subs. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 4, for the original cl.

<sup>2</sup> Subs. by s. 10. *ibid.*, for the original cl.

<sup>3</sup> Subs. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 5, for "the net annual value after deducting the foregoing allowances".

<sup>4</sup> The proviso rep. by Act 7 of 1939, s. 10.

## (Chapter III.—Taxable Income.)

*Provided* - - -

<sup>1</sup>[(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.] (4) - - -

10. (1) The tax shall be payable by an assessee under the head <sup>Business.</sup> <sup>2</sup>[" Profits and gains of business, profession or vocation "'] in respect of the profit or gains of any <sup>2</sup>[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 <sup>2</sup>[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 <sup>3</sup>[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 <sup>2</sup>[business, profession or vocation,] <sup>4</sup>\* \* \* \* the amount of the interest paid:

<sup>5</sup>[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 <sup>2</sup>[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 ;

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 10.

<sup>2</sup> Subs. by s. 11, *ibid.*, for " business ".

<sup>3</sup> Subs. by s. 11, *ibid.*, for " proportional part ".

<sup>4</sup> The words " where the payment of interest thereon is not in any way dependent on the earning of profits " rep. by s. 11, *ibid.*

<sup>5</sup> Added by s. 11, *ibid.*

## (Chapter III.—Taxable Income.)

(vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent,<sup>1</sup> [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<sup>2</sup> [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]<sup>3</sup> [and where the buildings have been newly erected, or the machinery or plant being new has been installed, after the 31st day of March, 1945, a further sum (which shall however not be deductible in determining the written down value for the purposes of this clause) in respect of the year of erection or installation equivalent,—

- (a) in the case of buildings the erection of which is begun and completed between the 1st day of April, 1946, and the 31st day of March <sup>1957</sup> ~~1956~~ (both dates inclusive), to fifteen per cent. of the cost thereof to the assessee ;
- (b) in the case of other buildings, to ten per cent. of the cost thereof to the assessee ;
- (c) in the case of machinery or plant, to twenty per cent. of the cost thereof to the assessee ;

Provided that—

- (a) the prescribed particulars have been duly furnished ;
- (b) ~~where full effect~~ cannot be given to any such allowance in any year<sup>5</sup> [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, <sup>6</sup>[then, subject to the provisions of <sup>7</sup>[clause (b) of] the proviso to sub-section (2) of section 24,] the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance, for depreciation for the following year and deemed to be part of that allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on or 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 ;

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 11, as amended by the Income-tax Law (Amendment) Act, 1940 (12 of 1940), s. 2.

<sup>2</sup> Added by Act 7 of 1939, s. 11, as amended by Act 12 of 1940, s. 2.

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1946 (8 of 1946), s. 3, with effect from 4th May, 1946.

<sup>4</sup> Subs. by the Indian Finance Act, 1948 (20 of 1948), s. 8, for "1948".

<sup>5</sup> Ins. by Act 7 of 1939, s. 11.

<sup>6</sup> Ins. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 6.

<sup>7</sup> Subs. by the Repealing and Amending Act, 1947 (2 of 1948), s. 4 for "cl. (a) of".

## (Chapter III.—Taxable Income.)

(vii)

<sup>1</sup>[(vii)] in respect of any such building, machinery or plant which has been sold or discarded or demolished or destroyed, the amount by which the written down value thereof exceeds the amount for which the building, machinery or plant, as the case may be, is actually sold or its scrap value: .

Provided that such amount is actually written off in the books of the assessee:

Provided further that where the amount for which any such building machinery or plant is sold exceeds the written down value, so much of the excess as does not exceed the difference between the original cost and the written down value shall be deemed to be profits of the previous year in which the sale took place:

Provided further that where any insurance, salvage or compensation moneys are received in respect of any such building, machinery or plant which has been discarded or demolished or destroyed, and the amount of such moneys does not exceed the written down value, the amount allowable under this clause shall be the amount, if any, by which the difference between the written down value and the scrap value exceeds the amount of such moneys:

Provided further that where any insurance, salvage or compensation moneys are received in respect of any such building; machinery or plant as aforesaid, and the amount of such moneys exceeds the difference between the written down value and the scrap value no amount shall be allowable under this clause and so much of the excess as does not exceed the difference between the original cost and the written down value less the scrap value shall be deemed to be profits of the previous year in which such moneys were received ;

Provided further that for the purposes of this clause, the original cost of a building, the written down value of which is determined in accordance with the first proviso to sub-section (5), shall be deemed to be the written down value so determined as at the date of its being brought into use for the purposes of the business, profession or vocation ;]

<sup>2</sup>[(viii)] in respect of animals which have been used for the purposes of the <sup>4</sup>[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] ;

<sup>3</sup>[(ix)] any sums paid on account of land-revenue, local rates or

<sup>1</sup> Subs., with effect from 4th May, 1946, by the Indian Income-tax (Amendment) Act, 1946 (8 of 1946), s. 3, for the former cl. which had been subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 11, for the original cl.

<sup>2</sup> Ins. as cl. (viiia) by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), s. 2, with effect from 1st April, 1928.

<sup>3</sup> Cls. (viiia), (viii) and (viiia) were renumbered (viii), (ix) and (x) respectively by Act 7 of 1939, s. 11.

<sup>4</sup> Subs. by s. 11, *ibid.*, for "business".

## (Chapter III.—Taxable Income.)

municipal taxes in respect of such part of the premises as is used for the purposes of the <sup>1</sup>[business, profession or vocation] ;

<sup>2</sup>[<sup>3</sup>(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 <sup>1</sup>[business, profession or vocation] for the year in question ; and
  - (c) the general practice in similar <sup>4</sup>[business, professions or vocations] ;
- <sup>5</sup>(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] ;

- <sup>6</sup>(xii) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business ;
- (xiii) any sum paid to a scientific research association having as its objects the undertaking of scientific research related to the class of business carried on and any sum paid to a university, college or other institution to be used for such scientific research :

Provided that such association, university, college or institution is for the time being approved for the purposes of this clause by the prescribed authority ;

- (xiv) in respect of any expenditure of a capital nature on scientific research related to the business, an allowance for each of the five consecutive previous years beginning with the year in which the expenditure was incurred, or where the expenditure was incurred prior to the commencement of the business, for each of

<sup>1</sup> Subs. by s. 11 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), for "business".

<sup>2</sup> Ins. as cl. (viii) by the Indian Income-tax (Third Amendment) Act, 1930 (23 of 1930), s. 2.

<sup>3</sup> Re-numbered by Act 7 of 1939, s. 11.

<sup>4</sup> Subs. by s. 11, *ibid.*, for "businesses".

<sup>5</sup> Ins. by s. 11, *ibid.*

<sup>6</sup> Cls. (xii) to (xiv) ins. by s. 3 of the Indian Income-tax (Amendment) Act, 1946 (8 of 1946), (with effect from 4th May, 1946).

*(Chapter III.—Taxable Income.)*

the five consecutive previous years beginning with the year in which the business was commenced, equal to one-fifth of such expenditure :

Provided that no allowance shall be made for any expenditure incurred more than three years before the commencement of the business :

Provided further that—

- (a) where an asset representing scientific research expenditure of a capital nature ceases to be used for scientific research related to such business—
  - (i) no allowance shall be made in respect of any previous year after the previous year in which the cessation takes place, and
  - (ii) if the aggregate of the amounts allowed under this clause added to the value of the asset immediately before the cessation is less than the said expenditure, there shall also be allowed in respect of the previous year in which the cessation takes place an additional deduction equal to the difference :
- (b) where such asset is sold without having been used for other purposes, the sale proceeds shall be taken to be the value of the asset immediately before the cessation, and if an additional allowance or a greater additional allowance would have been made in respect of the previous year in which the cessation occurred on the basis of that value, an amount equal to the additional allowance which would have been made or, as the case may be, to the difference between the additional allowance which would have been made and the additional allowance which was made for that year shall be made in respect of the previous year in which the sale occurs ;
- (c) where the proceeds of the sale *plus* the total amount of the allowances made under this clause exceed the amount of the expenditure, the excess or the amount of the allowances so made, whichever is the less, shall be treated as a receipt of the business accruing at the time of the sale ;
- (d) where a deduction is allowed for any previous year under this clause in respect of expenditure represented wholly or partly by any asset no deduction shall be allowed under clause (vi) or clause (vii) for the same previous year in respect of that asset ;
- (e) where an asset is used in the business after it ceases to be used for scientific research related to that business, and a claim for an allowance under clause (vi) or clause (vii) is made in respect of that asset, the actual cost to the assessee of the asset shall be treated as reduced by the amount of any deductions allowed under this clause ;
- (f) clause (b) of the proviso to clause (vi) shall apply in relation to deductions allowable under this clause as it applies in relation to deductions allowable in respect of depreciation ;

## (Chapter III.—Taxable Income.)

- (g) if any question arises under clause (xii), clause (xiii) or this clause as to whether, and if so to what extent, any activity constitutes or constituted or any asset is or was being used for scientific research ; the Central Board of Revenue shall refer the question to the prescribed authority, whose decision shall be final ;

*Explanation.*—In clause (xii), clause (xiii) and this clause—

- (i) “ scientific research ” means any activities in the fields of natural or applied science for the extension of knowledge ;
- (ii) references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research, but, save as aforesaid, include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research ;
- (iii) references to scientific research related to a business or class of business include—
- (a) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all businesses of that class ;
- (b) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business or, as the case may be, businesses of that class ;
- <sup>1</sup>[(xv)] any expenditure <sup>2</sup>[~~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] :

\* \* \* \* \*

<sup>4</sup>[(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 <sup>5</sup>[clause (xv)] of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains ; and nothing in <sup>5</sup>[clause (xv)] of sub-section (2) shall be deemed to authorise—

<sup>1</sup> Cl. (ix) which had been re-numbered (xii) by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939) was re-numbered (xv) by the Indian Income-tax (Amendment) Act, 1946 (8 of 1946), s. 3, with effect from 4th May, 1946.

<sup>2</sup> Subs. by Act 7 of 1939, s. 11, for “ (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains ”.

<sup>3</sup> The proviso ins. by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), s. 2, with effect from 1st April, 1928, was rep. by s. 11 of Act 7 of 1939.

<sup>4</sup> Sub-sections (3), (4), (5), (6) and (7) subs. by s. 11 of Act 7 of 1939, for the original sub-section (3).

<sup>5</sup> Subs. by the Repealing and Amending Act, 1947 (2 of 1948), s. 4, for “ cl. (xii) ”.

## (Chapter III.—Taxable Income.)

- (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 ; *Provided - - - -*

<sup>1</sup>[(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 was in force.] : *(C) - - - -*

<sup>2</sup>[Provided that in the case of a building previously the property of the assessee and brought into use for the purposes of the business, profession or vocation after the 28th day February, 1946, 'written down value' means the actual cost to the assessee reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee and had the provisions of this Act relating to the allowance for depreciation been in force on and from the date of acquisition.]

Provided <sup>2</sup>[further] that where the provisions of the proviso to sub-section (2) of section 26 are applicable, the actual cost to the assessee referred to in <sup>3</sup>[clauses (a) and (b)] shall be the actual cost to the person succeeded in the business, profession or vocation:

*\* Explanatory - - - - \**

(6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 6, for the former cls. (b) and (c).

<sup>2</sup> Ins. by the Indian Income-tax (Amendment) Act, 1946 (8 of 1946), s. 3, with effect from 4th May, 1946.

<sup>3</sup> Subs. by Act 23 of 1941, s. 6, for "clauses (a), (b) and (c)".

<sup>4</sup> A proviso was rep. by s. 6, *ibid.*

## (Chapter III.—Taxable Income.)

services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

(7) Notwithstanding anything to the contrary contained in sections 8, 9, 10, 12 or 18 the profits and gains of any business of insurance, and the tax payable thereon shall be computed in accordance with the rules contained in the Schedule to this Act.]

11. [Professional earnings.] Rep. by the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), s. 12.

Other sources.

12. (1) The tax shall be payable by an assessee under the head <sup>1</sup>["Income from other sources"] in respect of income, profits and gains of every kind <sup>2</sup>[which may be included in his total income] (if not included under any of the preceding heads).

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains <sup>3</sup>[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.]

<sup>4</sup>[(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.]

<sup>5</sup>[(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), <sup>6</sup>[(v), (vi) and (vii)] of sub-section (2) of section 10 in respect of such buildings.]

<sup>7</sup>[12A. Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency

Managing  
Agency  
Commission.

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 13, for "Other sources".

<sup>2</sup> Subs. by s. 13, *ibid.*, for "and from every source to which this Act applies".

<sup>3</sup> Subs. by s. 13, *ibid.*, for "provided that no allowance shall be made on account of any personal expenses of the assessee".

<sup>4</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 13.

<sup>5</sup> Added by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 7.

<sup>6</sup> Subs. by the Indian Income-tax (Amendment) Act, 1946 (8 of 1946), s. 4, for "(v) and (vi)", with effect from 4th May, 1946.

<sup>7</sup> Ins. by Act 7 of 1939, s. 14.

## (Chapter III.—Taxable Income.)

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.]

12AA [12B. (1) The tax shall be payable by an assessee under the head Capital gains. "Capital gains" in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st day of March, 1946; and such profits and gains shall be deemed to be income of the previous year in which the sale, exchange or transfer took place:

Provided that where the amount of capital gains in the previous year does not exceed fifteen thousand rupees, the tax shall not be payable by the assessee and such amount shall not be included in his total income:

Provided further that the tax shall not be payable by an assessee in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset, being property the income of which is chargeable under section 9 and which has been possessed by the assessee or a parent of his for not less than seven years before the date on which the sale, exchange or transfer took place; and the amount of such profits or gains shall not be included in his total income:

Provided further that any transfer of capital assets by reason of the compulsory acquisition thereof under any law for the time being in force relating to the compulsory acquisition of property for public purposes or any distribution of capital assets on the total or partial partition of a Hindu undivided family, or on the dissolution of a firm or other association of persons, or on the liquidation of a company, or under a deed of gift, bequest, will or transfer on irrevocable trust shall not, for the purposes of this section, be treated as sale, exchange or transfer of the capital assets:

Provided further that the transfer of a capital asset by a company to a subsidiary company, the whole of the share capital of which is held by the parent company or by the nominees thereof, shall not be treated as a sale, exchange or transfer within the meaning of this section where the subsidiary company is resident in British India and is registered under the Indian Companies Act, 1913, so however that for the purposes of clause (vi) or clause (vii) of sub-section (2) of section 10, the cost or the written down value, as the case may be, of the transferred capital asset shall be taken to be the same as it would have been if the parent company had continued to hold the capital asset for the purposes of its business.

(2) The amount of a capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made, namely:—

<sup>1</sup> Ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 6, with effect from 31st March, 1947.

## (Chapter III.—Taxable Income.)

- (i) expenditure incurred solely in connection with such sale, exchange or transfer:
- (ii) the actual cost to the assessee of the capital asset, including any expenditure of a capital nature incurred and borne by him in making any additions or alterations thereto, but excluding any expenditure in respect of which any allowance is admissible under any provision of sections 8, 9, 10 and 12:

Provided that where a person who acquires a capital asset from the assessee, whether by sale, exchange or transfer, is a person with whom the assessee is directly or indirectly connected, and the Income-tax Officer has reason to believe that the sale, exchange or transfer was effected with the object of avoidance or reduction of the liability of the assessee under this section, the full value of the consideration for which the sale, exchange or transfer is made shall, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, be taken to be the fair market value of the capital asset on the date on which the sale, exchange or transfer took place:

Provided further that where the capital asset is an asset in respect of which the assessee has obtained depreciation allowance in any year, the actual cost of the asset to the assessee shall be its written down value, as defined in section 10, increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of that section:

Provided further that where the capital asset became the property of the assessee <sup>or</sup> before the 1st day of January 1939, he may, on proof of the fair market value thereof on the said date to the satisfaction of the Income-tax Officer, substitute for the actual cost such fair market value which shall be deemed to be the actual cost to him of the asset, and which shall be reduced by the amount of depreciation, if any, allowed to the assessee after the said date and increased or diminished, as the case may be, by any adjustment made under clause (vii) of sub-section (2) of section 10:

Provided further that where the capital asset was on any previous occasion the subject of negotiations for its sale, exchange or transfer, any option or other money received and retained by the assessee in respect of such negotiations shall be deducted in computing the actual cost to him of such asset:

(3) Where any capital asset became the property of the assessee <sup>1</sup>[by succession, inheritance or devolution or] under any of the circumstances referred to in the third proviso to sub-section (1), its actual cost allowable to him for the purposes of this section shall be its actual cost to the previous owner thereof, and the provisions of sub-section (2) shall apply accordingly; and where the actual cost to the previous owner cannot be ascertained, the fair market value at the date on which the capital asset became the property of the previous owner shall be deemed to be the actual cost thereof.

(4) Notwithstanding anything contained in sub-section (1), where a

<sup>1</sup> Ins. by the Income-tax and Business Profits Tax (Amendment) Act, 1947 (44 of 1947), s. 2, with effect from 1st April, 1947.

## (Chapter III.—Taxable Income.)

capital gain arises from the sale, exchange or transfer of a capital asset which immediately before the date on which the sale, exchange or transfer took place was being used by the assessee for the purposes of his business, profession or vocation, or which in the two years immediately preceding that date was being used by him or a parent of his mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased a new capital asset for the same purposes of his business, profession or vocation or, as the case may be, for the purposes of his own residence, then instead of the capital gain being charged to tax as income of the previous year in which the sale, exchange or transfer took place, it shall, if the assessee so elects in writing before the assessment is made be dealt with in accordance with the following provisions of this sub-section, that is to say,—

(a) if the amount of the capital gain is greater than the cost of the new asset,—

(i) the difference between the amount of the capital gain and the cost of the new asset shall be charged under this section as income of the previous year, and

(ii) for the purposes of computing in respect of the new asset any allowance under clause (vi) or clause (vii) of sub-section (2) of section 10 or the amount of any capital gain arising from its sale, exchange or transfer, the cost or the written down value, as the case may be, shall be *nil*, or

(b) if the amount of the capital gain is equal to or less than the cost of the new asset,—

(i) the capital gain shall not be charged under this section, and

(ii) for the purposes of computing in respect of the new asset any allowance under the said clause (vi) or any allowance or adjustment under the said clause (vii) or the amount of any capital gain arising from its sale, exchange or transfer the cost or the written down value, as the case may be, shall be reduced by the amount of the capital gain:

Provided that where in respect of the purchase of a new capital asset consisting of plant or machinery the assessee satisfies the Income-tax Officer that despite the exercise of due diligence it has not been possible to make the purchase within the period specified in this sub-section, the Income-tax Officer may, with the prior approval of the Inspecting Assistant Commissioner of Income-tax, extend the said period to such date as he considers reasonable.]

13. Income, profits and gains shall be computed, for the purposes of section 10, <sup>1\*</sup> and 12, in accordance with the method of accounting regularly employed by the assessee: Method of accounting.

<sup>1</sup> The figures "11" rep. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 15.

## (Chapter III.—Taxable Income.)

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.

Exemptions  
of a general  
nature.

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family <sup>1</sup>[where such sum has been paid out of the income of the family.]

<sup>2</sup>[(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 ;] <sup>3</sup>[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 <sup>4</sup>[section 12B or] section 42.]

Exemption  
in the case  
of life  
insurances.

15. (1) The tax shall not be payable <sup>5</sup>[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 <sup>6</sup>[1925], applies \* \* \* \*7.

XIX of 1925.

(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.

<sup>8</sup>[(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

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 3.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 16, for the former sub-section.

<sup>3</sup> Added by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 8.

<sup>4</sup> Ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 7, with effect from 31st March 1947.

<sup>5</sup> Subs. by Act 7 of 1939, s. 17, for the original words.

<sup>6</sup> Subs. by s. 17, *ibid.*, for "(1897)".

<sup>7</sup> Certain words were rep. by the Indian Income-tax (Amendment) Act, 1924 (11 of 1924), s. 5.

<sup>8</sup> Ins. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 4.

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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 <sup>1</sup>[second proviso] to sub-section (1) of section 7 <sup>2</sup>[and any sums exempted under subsection (1) of section 58F] exceed <sup>3</sup>[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].

<sup>4</sup>[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~~ <sup>Central Act</sup> 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.] Exemption of portion of earned income.

<sup>5</sup>[15B. (1) The tax shall not be payable by an assessee in respect of any sums paid by him <sup>6</sup>[on or after the first day of April, 1948] as donations to any institution or fund which is established in British India for a charitable purpose and is approved by the Central Government for the purposes of this section: Exemption on account of donations for charitable purposes.

Provided that the total of the sums so paid is not less than two hundred and fifty rupees:

Provided further that in the case of a company this exemption shall apply only in respect of the income-tax, and not in respect of any super-tax, payable by it.

*Explanation.*—In this section, 'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.

(2) The aggregate of any sums exempted under this section shall not exceed—

(a) one-twentieth in the case of a company, and one-tenth in any other case, of the assessee's total income as reduced by any portion thereof exempt from tax under any other provision of this Act, or

(b) two hundred and fifty thousand rupees, whichever is less ;

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 17, for "proviso".

<sup>2</sup> Ins. by the Indian Income-tax (Provident Funds Relief) Act, 1929 (12 of 1929), s. 3, with effect from 15th March 1930.

<sup>3</sup> Subs. by Act 7 of 1939, s. 17, for "one-sixth of the total income of the assessee".

<sup>4</sup> Ins. by the Indian Income-tax (Amendment) Ordinance, 1945 (9 of 1945), s. 3 (with effect from 28th April, 1945, for indefinite period).

<sup>5</sup> Ins. by the Indian Finance Act, 1948 (20 of 1948), s. 8.

<sup>6</sup> Ins. by the Indian Income-tax (Amendment) Ordinance, 1948 (13 of 1948), s. 2 (with effect from 31st May, 1948 for six months).

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(3) The amount by which the tax payable by an assessee is reduced on account of an exemption under this section shall not in any case exceed half the amount in respect of which the exemption is allowed under this section.]

Exemptions and exclusions determining the total income.

16. <sup>1</sup>[(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 <sup>2</sup>[section 14, ~~section 15 and section 15B~~ <sup>secs 13, 14, 15, 15B</sup>] shall be included <sup>3</sup>[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 from assets remaining the property of the settlor or disposer, shall be deemed to be income of the settlor or disposer, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transferor :

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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, disposer or transferor, or in any way gives the settlor, disposer 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 disposer' 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 revoc-

<sup>1</sup> Subs. by s. 18 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), for the former sub-sections (1) and (2).

<sup>2</sup> Subs. by the Indian Finance Act, 1948 (20 of 1948), s. 8, for "section 14 and section 15".

<sup>3</sup> Added by the Indian Income-tax (Amendment) Ordinance, 1945 (9 of 1945), (with effect from 28th April, 1945, for indefinite period).

## (Chapter III.—Taxable Income.)

able for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponer 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, <sup>1</sup>[and shall be increased to such amount as would, if income-tax (but not super-tax) at the rate applicable to the total income <sup>2</sup>[of the company (without taking into account any rebate allowed or additional income-tax charged)] for the financial year in which the dividend is paid, credited or distributed or deemed to have been paid, credited or distributed, were deducted therefrom, be equal to the amount of the dividend:]

Provided that when any portion of the profits and gains of 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, <sup>3</sup>[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.]

<sup>4</sup>[(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 <sup>5</sup>[otherwise than for adequate consideration] ; and

(b) so much of the income of any <sup>6</sup>[person or association of persons] <sup>7</sup>\* \* \* as arises from assets transferred, <sup>8</sup>[otherwise than for

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 9, for the former words.

<sup>2</sup> Subs. by the Indian Finance Act, 1948 (20 of 1948), s. 8, for "of a company".

<sup>3</sup> Subs. by Act 23 of 1941, s. 9, for "the income-tax to be added".

<sup>4</sup> Added by the Indian Income-tax (Amendment) Act, 1937 (4 of 1937), s. 2. This Amendment does not have effect in respect of any income chargeable to income-tax for any year ending before the 1st day of April, 1937—see s. 5, *ibid.*

<sup>5</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 18.

<sup>6</sup> Subs. by s. 18, *ibid.*, for "association of Individuals".

<sup>7</sup> The words "consisting of such individual and his wife" rep. by s. 18, *ibid.*

<sup>8</sup> Subs. by s. 18, *ibid.*, for "to the association".

## (Chapter III.—Taxable Income.)

adequate consideration to the person or association] by such individual <sup>1</sup>[for the benefit of his wife or a minor child or both].]

Determination  
of tax pay-  
able in cer-  
tain special  
cases.

<sup>2</sup>[17. (1) Where a person is not resident in British India, and is a British subject as defined in <sup>3</sup>[section 27] of the British Nationality and Status of Aliens Act, 1914, or a subject of a State in India or Burma, <sup>4</sup>[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.

<sup>4</sup> and <sup>5</sup> Geo.  
<sup>5</sup>, c. 17.

*Provided*—  
(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.]

<sup>5</sup>[(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 <sup>6</sup>[or under section 15B], 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—

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 18.

<sup>2</sup> Subs. by s. 19 of Act 17 of 1939, for the original section.

<sup>3</sup> Subs. by the Repealing and Amending Act, 1939 (34 of 1939), s. 2 and Sch. I, for "section 17".

<sup>4</sup> Ins. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 10.

<sup>5</sup> Added by s. 10, *ibid.*

<sup>6</sup> Ins. by the Indian Finance Act, 1948 (20 of 1948), s. 8.

## (Chapter III.—Taxable Income.)

- (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].

<sup>1</sup>[(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.]

<sup>2</sup>[(6) Where the total income of an assessee, not being a company, includes any income chargeable under the head "Capital gains", the tax, including super-tax, payable by him on his total income shall be—

(i) income-tax and super-tax payable on his total income as reduced by the amount of such inclusion, had such reduced income been his total income, *plus*

(ii) income-tax on the whole amount of such inclusion at the following rates, namely:—

where such amount—	Rate.
exceeds Rs. 15,000 but does not exceed Rs. 50,000 ... ..	... One anna in the rupee,
exceeds Rs. 50,000 but does not exceed Rs. 2,00,000 ... ..	... Two annas in the rupee,
exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000 ... ..	... Three annas in the rupee,
exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000 ... ..	... Four annas in the rupee,
exceeds Rs. 10,00,000 ... ..	... Five annas in the rupee:

Provided that where owing to the fact that the amount of such inclusion has exceeded a certain limit, income-tax thereon is payable or is payable at

<sup>1</sup> Added by the Indian Income-tax (Amendment) Ordinance, 1945 (9 of 1945), s. 5 (with effect from 28th April, 1945, for indefinite period).

<sup>2</sup> Ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947, (22 of 1947), s. 8, with effect from 31st March, 1947.

(Chapter III.—Taxable Income. Chapter IV.—Deductions  
and Assessment.

a higher rate, the amount of income-tax so payable shall be reduced so as not to exceed—

- (a) the amount which would have been payable if the amount of such inclusion had not exceeded that limit, *plus*  
(b) one-half of the amount by which the amount of such inclusion exceeds that limit.

(7) Where the total income of a company includes any income chargeable under the head "Capital gains", the super-tax payable by the company in any year shall be reduced by an amount computed on that part of its total income which consists of such inclusion at the rate of super-tax (excluding the rate of additional super-tax, if any) specified in the case of a company by the annual Act of the Central Legislature fixing the rate or rates of tax for that year.]

## CHAPTER IV.

## DEDUCTIONS AND ASSESSMENT.

18. 1\* \* \* \*

Payment by  
deduction at  
source.

(2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax <sup>2</sup>[and super-tax] on the amount payable <sup>3</sup>[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.

<sup>4</sup>[(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 <sup>5</sup>[on behalf of the Crown], and the value in rupees of such income shall be calculated at the prescribed rate of exchange.]

<sup>6</sup>[(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

<sup>1</sup> Sub-section (1) was rep. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 7.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 20, for "but not super-tax" which had been ins. by Act 18 of 1933, s. 7.

<sup>3</sup> Subs. by Act 7 of 1939, s. 20, for "at the rate applicable to the estimated income of the assessee under this head".

<sup>4</sup> Added by the Indian Income-tax (Second Amendment) Act, 1925 (16 of 1925), s. 2.

<sup>5</sup> Subs. by the A. O. 1937 for "on behalf of Govt."

<sup>6</sup> Ins. by Act 7 of 1939, s. 20.

## (Chapter IV.—Deductions and Assessment.)

head "Interest on Securities" shall, <sup>1</sup>[unless otherwise prescribed in the case of any security of the <sup>2</sup>[Central Government] ] at the time of payment, deduct income-tax <sup>1</sup>[but not super-tax] on the amount of the interest payable at the maximum rate:

<sup>1</sup>[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 <sup>3</sup>[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 <sup>4</sup>[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.]

<sup>3</sup>[(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:]

<sup>5</sup>[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 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.]

<sup>6</sup>[(3b)] Where the Income-tax Officer has reason to believe that the <sup>7</sup>[total world income] of any person residing out of British India to whom any interest not being "Interest on Securities" <sup>8</sup>[or any other sum chargeable under this Act] is payable, will in any year exceed the maximum amount

<sup>1</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 7.

<sup>2</sup> Subs. by the A. O. 1937 for "G. of I."

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 20.

<sup>4</sup> Subs. by Act 7 of 1939, s. 20, for "herein referred to".

<sup>5</sup> Added by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 6.

<sup>6</sup> Sub sections (3a), (3b), (3c) and (3d) which had been ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 7, were re-numbered (3b), (3c), (3d) and (3e) respectively by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 20.

<sup>7</sup> Subs. by Act 7 of 1939, s. 20, for "total income".

<sup>8</sup> Ins. by s. 20, *ibid.*

## (Chapter IV.—Deductions and Assessment.)

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 <sup>1</sup>[making such payments] to such person to deduct at the time of payment <sup>2</sup>\* \* \* super-tax at the rates determined by the Income-tax Officer to be applicable to the <sup>3</sup>[total world income] of such person in that year.

<sup>4</sup>[(3c)] Where the person responsible for paying any interest not being "Interest on Securities" <sup>5</sup>[or any other sum chargeable under this Act] to any person <sup>6</sup>[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 <sup>1</sup>[making such payments], shall; if he has not reason to believe that the recipient is resident in British India, and no order under <sup>7</sup>[sub-section (3b)] has been received in respect of such recipient, deduct at the time of payment <sup>8</sup>\* \* \* \* \* super-tax on the amount by which <sup>9</sup>[the total amount of such payments] exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.

<sup>4</sup>[(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 <sup>3</sup>[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.

<sup>4</sup>[(3e)] If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder <sup>10</sup>[by an Indian company or by a company which has made such effective arrangements as may be prescribed for the deduction of super-tax from such dividends] <sup>11</sup>[(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

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 20, for "paying such interest".

<sup>2</sup> The words "income-tax and" rep. by s. 20, *ibid.*

<sup>3</sup> Subs. by s. 20, *ibid.*, for "total income".

<sup>4</sup> Sub-sections (3a), (3b), (3c) and (3d) which had been ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 7, were renumbered (3b), (3c), (3d) and (3e) respectively by the Indian Income-tax (Amendment) Act, 1933 (7 of 1933), s. 20.

<sup>5</sup> Ins. by Act 7 of 1939, s. 20.

<sup>6</sup> Subs. by s. 20, *ibid.*, for "pays to that person in any year an amount of such interest".

<sup>7</sup> Subs. by s. 20, *ibid.*, for "sub-section (3a)".

<sup>8</sup> The words "income-tax on the amount of such interest at the rate appropriate to such total, and" rep. by s. 20, *ibid.*

<sup>9</sup> Subs. by s. 20, *ibid.*, for "such total".

<sup>10</sup> Subs. by the Indian Finance Act, 1948 (20 of 1948), s. 8, for "by a company".

<sup>11</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 11, for "(together with the amount of any income-tax payable by the company in respect thereof)".

## (Chapter IV.—Deductions and Assessment.)

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 <sup>2</sup>[(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. *and . . . Government*

(5) Any deduction made in accordance with the provisions of this section <sup>3</sup>[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 <sup>4</sup>[or super-tax] on behalf of the person from whose income the deduction was made, or of the owner of the security <sup>5</sup>[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: *on - he*

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:

<sup>6</sup>[Provided further that where such person or owner is a person whose income is included under the provisions of <sup>7</sup>[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 <sup>8</sup>[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.] *Provided - - -*

(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 <sup>9</sup>[Central Government] or as the <sup>10</sup>[Central Board of Revenue] directs.

(7) If any such person does not deduct <sup>11</sup>[or after deducting fails to pay] the tax as required by <sup>12</sup>[or under] this section, <sup>13</sup>[he, and in the cases specified in sub-sections (3d) and ~~(3e)~~ the company of which he is the

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 20, for "sub-section (3c)".

<sup>2</sup> Subs. by Act 23 of 1941, s. 11, for "(together with the amount of such income-tax as aforesaid)".

<sup>3</sup> Ins. by Act 7 of 1939, s. 20.

<sup>4</sup> Ins. by Act 18 of 1933, s. 7.

<sup>5</sup> Ins. by Act 7 of 1939, s. 20.

<sup>6</sup> Added by the Indian Income-tax (Amendment) Act, 1937 (4 of 1937), s. 3.

<sup>7</sup> Subs. by Act 7 of 1939, s. 20, for "sub-section (3) of section 16".

<sup>8</sup> Subs. by s. 20, *ibid.*, for "that person".

<sup>9</sup> Subs. by the A. O. 1937 for "G. of I."

<sup>10</sup> Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., for "Board of Inland Revenue".

<sup>11</sup> Subs. by Act 7 of 1939, s. 20, for "and pay".

<sup>12</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 7.

<sup>13</sup> Subs. by Act 7 of 1939, s. 20, for "he".

## (Chapter IV.—Deductions and Assessment.)

principal officer] shall, without prejudice to any other consequences which <sup>1</sup>[he or it] may incur be deemed to be <sup>2</sup>[an assessee] in default in respect of the tax:

<sup>3</sup>[Provided that the Income-tax Officer shall not make a direction under sub-section (r) 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, <sup>3</sup>[or super-tax] in accordance with the provisions of <sup>4</sup>[sub-section (3), (3a), (3b), (3c), <sup>5</sup>[(3d) or (3e)] ], shall <sup>6</sup>[at the time of payment of the sum from which tax has been deducted], furnish to the person to whom <sup>7</sup>[such payment is made] a certificate to the effect that income-tax <sup>3</sup>[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. *Explanation*

Advance  
payment of  
tax.

<sup>8</sup>[18A. (r) (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 (r) 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:

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 20, for "he".

<sup>2</sup> Subs. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 7, for "personally".

<sup>3</sup> Ins. *ibid.*

<sup>4</sup> Subs. by s. 7, *ibid.*, for "sub-section (3)".

<sup>5</sup> Subs. by Act 7 of 1939, s. 20, for "or (3D)".

<sup>6</sup> Subs. by s. 20, *ibid.*, for "at the time of payment of interest or dividends". The words "or dividends" had been ins. by the Repealing and Amending Act, 1935 (12 of 1935), s. 2 and Sch. I.

<sup>7</sup> Subs. by Act 12 of 1935, s. 2 and Sch. I, for "the interest is paid".

<sup>8</sup> Sub-sections (r) to (rr) of s. 18A were ins. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 5.

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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

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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~~ <sup>one lakh</sup>, 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 assess-

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ment 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),

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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 sub-section.

(11) Any sum other than a penalty or interest paid by or recovered from an assessee in pursuance of the provisions of this section shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the financial year next following the year in which it was payable, and credit therefor shall be given to the assessee in the regular assessment.]

<sup>1</sup>[(12) Any income chargeable under the head "Capital gains" shall not be taken into account for any of the purposes of this section.]

<sup>2</sup>[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

Payment in  
other cases.

<sup>1</sup> Sub-section (12) was ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 9, with effect from 31st March, 1947.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 21, for the original section as amended by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 8, and the Repealing and Amending Act, 1934 (24 of 1934), s. 2 and Sch. I.

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with the provisions of section 18, income-tax shall be payable by the assessee direct.]

<sup>1</sup>[19A. The principal officer of every company <sup>2</sup>[which is an Indian company or a company which has made such effective arrangements as may be prescribed for the declaration and payment of dividends in British India] 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.]

Supply of information regarding dividends.

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

Certificate by company to shareholders receiving dividends.

<sup>3</sup>[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 <sup>4</sup>[four hundred] rupees as may be prescribed in this behalf, together with the amount paid to each such person.]

Supply of information regarding interest.

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 <sup>5</sup>[and verified in the prescribed manner], a return in writing showing—

Annual return.

- (a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day of March, or has received <sup>5</sup>[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 ;

<sup>1</sup> S. 19A was ins. by the Indian Income-tax (Amendment) Act, 1926 (24 of 1926), s. 2, with effect from 1st April, 1926.

<sup>2</sup> Ins. by the Indian Finance Act, 1948 (20 of 1948), s. 8.

<sup>3</sup> S. 20A was ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 9.

<sup>4</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 22, for "one thousand".

<sup>5</sup> Ins. by s. 23, *ibid.*

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- (b) the amount of the income so received <sup>1</sup>[or so due] by each such person, and the time or times at which the same was paid <sup>2</sup>[or due, as the case may be] ;
- (c) the amount deducted in respect of income-tax <sup>1</sup>[and super-tax] from the income of each such person.

Return of  
income.

22. <sup>3</sup>[(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 <sup>4</sup>\* \* \* \* 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 <sup>5</sup>[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 <sup>6</sup>[and total world income] during the previous year:

<sup>7</sup>[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 <sup>8</sup>\* \* \* \*

(4) The Income-tax Officer may serve <sup>9</sup>\* \* \* \* on any person <sup>10</sup>[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

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 23.

<sup>2</sup> Added *ibid.*

<sup>3</sup> Subs. by s. 24, *ibid.*, for the original sub-section.

<sup>4</sup> The words "other than a company" rep. by s. 24, *ibid.*

<sup>5</sup> Subs. by s. 24, *ibid.*, for "shall serve".

<sup>6</sup> Ins. *ibid.*

<sup>7</sup> Added *ibid.*

<sup>8</sup> The words "and any return so made shall be deemed to be a return made in due time under this section" rep. *ibid.*

<sup>9</sup> The words "on the principal officer of any company or" rep. *ibid.*

<sup>10</sup> Ins. *ibid.*

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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.

<sup>1</sup>[(5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof.]

23. (1) If the Income-tax Officer is satisfied <sup>2</sup>[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. Assessment.

(2) If the Income-tax Officer <sup>3</sup>[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) <sup>4</sup>[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 <sup>2</sup>[and determine the sum

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 24.

<sup>2</sup> Ins. by s. 25, *ibid.*

<sup>3</sup> Subs. by s. 25, *ibid.*, for "has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve notice on the person who made the return".

<sup>4</sup> Subs. by s. 25, *ibid.*, for "If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be".

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payable by the assessee on the basis of such assessment] <sup>1</sup>[and, <sup>2</sup>[in the case of a firm, may refuse to register it or may cancel its registration if it is already registered] ]:

<sup>1</sup>[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.]

<sup>3</sup>[(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 ;

<sup>4</sup>[Provided also that if at the time of assessment of any partner of a registered firm, the Income-tax Officer is of opinion that the partner is residing in Pakistan, the partner's share of the income, profits and gains of the firm shall be assessed on the firm in the manner laid down in the preceding proviso and the sum so determined as payable shall be paid by the firm ; and]

(b) in the case of an unregistered firm, the Income-tax Officer may instead of determining the sum payable by the firm itself proceed in the manner laid down in clause (a) as applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm.]

<sup>5</sup>[(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

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 3, with effect from 1st April, 1930.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 25, for "in the case of a registered firm, may cancel its registration".

<sup>3</sup> Added *ibid.*

<sup>4</sup> Subs., with effect from 15th August, 1947, for "and" by G. G. O. 31, dated 10th December, 1947, see Gazette of India, 1947, Extraordinary, p. 1330.

<sup>5</sup> Added by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 12.

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determination has been based and the apportionment thereof between the several partners.]

<sup>1</sup>[23A. <sup>2</sup>\* \* \*

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Power to  
\* assess indivi-  
dual members  
of certain  
companies.

<sup>3</sup>[(1)]. <sup>3</sup>[Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company, in general meeting <sup>4</sup>\* \* \* \* are less than sixty per cent. of the assessable income of the company of that previous year, <sup>5</sup>[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 <sup>5</sup>[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.' <sup>6</sup>\* \* \* \* the words 'one hundred per cent.' <sup>6</sup>\* \* \* \* 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 <sup>7</sup>[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

<sup>1</sup> S. 23A was ins. by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 4, with effect from 1st April, 1923. This section does not apply in respect of profits and gains of the previous year for the assessment for the year ending on the 31st day of March, 1946, see s. 7(9) of the Indian Finance Act, 1945.

<sup>2</sup> Original sub-section (1) was rep. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 26.

<sup>3</sup> Original sub-section (2) was re-numbered (1) and this portion subs. by s. 26, *ibid.*

<sup>4</sup> The words "increased by any income-tax payable thereon" rep. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 7.

<sup>5</sup> Ins. by s. 7, *ibid.*

<sup>6</sup> The words "of the assessable income" rep. by s. 7, *ibid.*

<sup>7</sup> Ins. *ibid.*

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distribution made is not less than sixty per cent. of the assessable income of the company of the previous year concerned <sup>1</sup>[as reduced by the amount of income-tax and super-tax payable by the company in respect thereof ]:

<sup>2</sup>[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 sub-section,—

<sup>3</sup>\* \* \* \* \*

<sup>4</sup>\* a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public.

<sup>5</sup>\* \* \* \* \*

<sup>6</sup>[(2)] The <sup>7</sup>[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 <sup>8</sup>\* \* \* company concerned an opportunity of being heard.

<sup>9</sup>[(3)] <sup>10</sup>\* \* \* \*

(ii) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of <sup>11</sup>[sub-section (1)] the tax payable in respect thereof shall be recoverable from the company, <sup>12</sup>[if it cannot be recovered from such member] <sup>13</sup>\* \* \* \*

(iii) Where tax is recoverable from a company <sup>14</sup>\* \* \* \* 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 <sup>15</sup>\* \* \* \*

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 7.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 26, for the former proviso.

<sup>3</sup> Cl. (a) rep. by s. 26, *ibid.*

<sup>4</sup> The brackets and letter “(b)” rep. by s. 26, *ibid.*

<sup>5</sup> Cls. (c) and (d) rep. by s. 26, *ibid.*

<sup>6</sup> Sub-section (3) was renumbered (2) by s. 26, *ibid.*

<sup>7</sup> Ins. by s. 26, *ibid.*

<sup>8</sup> The words “firm, association or” rep. by s. 26, *ibid.*

<sup>9</sup> Sub-section (4) was renumbered (3) by s. 26, *ibid.*

<sup>10</sup> Sub-clause (i) was rep. by s. 26, *ibid.*

<sup>11</sup> Subs. by s. 26, *ibid.*, for “sub-section (2)”.

<sup>12</sup> Subs. by s. 26, *ibid.*, for “and may be recovered from such member”.

<sup>13</sup> Certain words were rep. by s. 26, *ibid.*

<sup>14</sup> The words “firm or other association” rep. by s. 26, *ibid.*

<sup>15</sup> The words “firm or association” rep. by s. 26, *ibid.*

## (Chapter IV.—Deductions and Assessment.)

shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VI.

<sup>1</sup>[(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 number of the company shall be excluded in computing his total income of that year.

<sup>2</sup>[(5)] When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company.]

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.

<sup>3</sup>[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:]

<sup>4</sup>[Provided <sup>3</sup>[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.]

<sup>5</sup>[(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

<sup>1</sup> Sub-section (5) was renumbered (4) by the Indian Income-tax Act, 1939 (7 of 1939), s. 26.

<sup>2</sup> Added by s. 26, *ibid.*

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 6.

<sup>4</sup> Added by Act 7 of 1939, s. 27.

<sup>5</sup> Sub-sections (2) and (3) subs. by s. 27, *ibid.*, for the original sub-section (2), as amended by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 10.

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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:—

<sup>1</sup>[Provided that—

<sup>2</sup>[(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 profit and gains accruing or arising in an Indian State from the same business, profession or vocation and exempt from tax under the said provisions ;]

<sup>3</sup>[(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 ;]

<sup>3</sup>[(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 ;

<sup>3</sup>[(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 ;

<sup>4</sup><sup>3</sup>[(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

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 13.

<sup>2</sup> Ins. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 6.

<sup>3</sup> Relettered by s. 6, *ibid.*

<sup>4</sup> Subs. by Act 23 of 1941, s. 13, for the third proviso.

*(Chapter IV.—Deductions and Assessment.)*

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.]

<sup>1</sup>[(2a) Notwithstanding anything contained in sub-section (1), where the loss sustained is a loss falling under the head "Capital gains", such loss shall not be set off except against any profits and gains falling under that head.

(2b) Where an assessee sustains a loss such as is referred to in sub-section (2a) and the loss cannot be wholly set off in accordance with the provisions of that sub-section, the portion not so set off shall be carried forward to the following year and set off against capital gains for that year, and if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following year and so on, so however that no such loss shall be so carried forward for more than six years:

Provided that where the loss sustained in any previous year does not exceed fifteen thousand rupees, it shall not be carried forward.]

(3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section.]

<sup>2</sup>[24A. (1) When it appears to the Income-tax Officer that any person may leave British India during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax Officer may proceed to assess him on his total income <sup>3</sup>[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]:

Assessment  
in case of  
departure  
from  
British  
India.

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains which have escaped assess-

<sup>1</sup> Ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 10, with effect from 31st March, 1947.

<sup>2</sup> S. 24A was ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 11.

<sup>3</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 28, for the former words.

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ment <sup>1</sup>[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 <sup>2</sup>[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.]

Tax of  
deceased  
person pay-  
able by repre-  
sentative.

<sup>3</sup>[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.

<sup>4</sup>[(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.]

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions <sup>5</sup>\* \* \* 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 <sup>6</sup>[, 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

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 28, for "or have been assessed at too low a rate".

<sup>2</sup> Subs. *ibid.*, for "comprised in the first period referred to in".

<sup>3</sup> S. 24B was ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 11.

<sup>4</sup> Subs. by Act 7 of 1939, s. 29, for the former sub-section.

<sup>5</sup> The words, brackets and figure "of sub-section (2)" rep. by s. 29, *ibid.*

<sup>6</sup> Ins. by s. 29, *ibid.*

## (Chapter IV.—Deductions and Assessment.)

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 <sup>1</sup>[to which sub-section (3) is not applicable], is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year, and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

Assessment  
in case of  
discontinued  
business.

(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.

VII of 1918.

(3) Where any business, profession or vocation <sup>2\*</sup> \* on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, <sup>3</sup>[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.

VII of 1939.

VII of 1918.

<sup>4</sup>[(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 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, 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

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 7, for "on which income-tax was not at any time charged under the provisions of the Indian Income-tax Act, 1918", which had been subs. by the Indian Income-tax (Amendment) Act, 1924 (11 of 1924), s. 6, for "commenced after the 31st day of March, 1922".

<sup>2</sup> The words "which was in existence at the commencement of this Act, and" were rep. by the Indian Income-tax (Amendment) Act, 1924 (11 of 1924), s. 6.

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 30.

<sup>4</sup> Sub-sections (4) and (5) were ins. *ibid.*

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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:

<sup>1</sup>[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, 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.] II of 1886.

(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.]

<sup>2</sup>[(6)] Where an assessment is to be made under <sup>3</sup>[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.

<sup>4</sup>[25A. (1) Where at the time of making an assessment under section 23, it is claimed by or on behalf of any member of a Hindu family hitherto <sup>5</sup>[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

Assessment after partition of a Hindu undivided family.

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 14.

<sup>2</sup> Sub-section (4) was re-numbered (6) by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 30.

<sup>3</sup> Subs. by s. 30, *ibid.*, for "sub-section (1) or sub-section (3)".

<sup>4</sup> S. 25A was ins. by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), s. 4, with effect from 1st April, 1928.

<sup>5</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 3.

<sup>6</sup> The words "that a separation of the members of the family has taken place and" rep. by Act 7 of 1939.

## (Chapter IV.—Deductions and Assessment.)

family property has been partitioned among the various members or groups of members in definite portions <sup>1</sup>\* \* \* \* \* 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, <sup>2</sup>[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 <sup>3</sup>\* \* \* partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in sub-section (1) of section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it; and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 23:

Provided that all the <sup>4</sup>[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.]

<sup>5</sup>[(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.]

<sup>6</sup>[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, <sup>7</sup>[the assessment shall be made on the firm as constituted] at the time of making the assessment:

Change in constitution of a firm.

<sup>8</sup>[Provided that the income, profits and gains of the previous year shall, for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same:

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment.]

<sup>9</sup>[(2) Where a person carrying on any business, profession or vocation

<sup>1</sup> The words "before the end of the previous year" rep. by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 3.

<sup>2</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 31.

<sup>3</sup> The words "separation or" rep. by s. 31, *ibid.*

<sup>4</sup> Subs. by s. 31, *ibid.*, for "separated members and groups of members".

<sup>5</sup> Added by Act 22 of 1930, s. 3.

<sup>6</sup> Subs. by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), s. 5, for the original section, with effect from 1st April, 1928.

<sup>7</sup> Subs. by Act 7 of 1939, s. 32, for the former words.

<sup>8</sup> Added by s. 32, *ibid.*

<sup>9</sup> Subs. *ibid.*, for the former sub-section.

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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.] ]

Procedure  
in registra-  
tion of  
firms.

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

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

Cancellation  
of assess-  
ment when  
cause is  
shown.

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

Penalty for  
concealment  
of income  
or improper  
distribution  
of profits.

<sup>3</sup>[28. <sup>4</sup>(1) If the Income-tax Officer, the Appellate Assistant Commissioner <sup>5</sup>[or the Appellate Tribunal], in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 5, with effect from 1st April, 1930.

<sup>2</sup> The words "or, in the case of a company, the principal officer thereof" rep. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 33.

<sup>3</sup> S. 28 was subs. by Act 21 of 1930, s. 6, for the original section, with effect from 1st April, 1930.

<sup>4</sup> Subs. by Act 7 of 1939, s. 34, for the former sub-section.

<sup>5</sup> Subs. by s. 86, *ibid.*, for "or the Commissioner".

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- 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 :

<sup>1</sup>[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 imposed 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 ;]

- <sup>2</sup>[(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.]

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 86, for " he may direct ".

<sup>2</sup> Added by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 8.

## (Chapter IV.—Deductions and Assessment.)

(2) If the Income-tax Officer, the <sup>1</sup>[Appellate Assistant Commissioner] <sup>2</sup>[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, <sup>3</sup>[he or it may direct] that such partner shall, <sup>4</sup>[in addition to the income-tax and super-tax, if any, payable by him] pay by way of penalty a sum <sup>5</sup>[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 <sup>1</sup>[Appellate Assistant Commissioner] <sup>6</sup>[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.]

<sup>7</sup>[(6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.]

<sup>8</sup>[29. When any <sup>9</sup>[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 <sup>9</sup>[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 <sup>10</sup>[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],

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 34, for "Assistant Commissioner".

<sup>2</sup> Subs. by s. 86, *ibid.*, for "or the Commissioner".

<sup>3</sup> Subs. by s. 86, *ibid.*, for "he may direct".

<sup>4</sup> Subs. by s. 34, *ibid.*, for "in addition to the Income-tax payable by him".

<sup>5</sup> Subs. by s. 34, *ibid.*, for "not exceeding the amount of income-tax".

<sup>6</sup> Subs. by s. 86, *ibid.*, for "or a Commissioner who has made".

<sup>7</sup> Added by s. 34, *ibid.*

<sup>8</sup> Subs. by s. 35, *ibid.*, for the original section.

<sup>9</sup> Subs. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 8, for "tax or penalty".

<sup>10</sup> Subs. by Act 7 of 1939, s. 36, for "or rate at which he is assessed under section 23 or section 27".

Notice of demand.

Appeal against assessment under this Act.

## (Chapter IV.—Deductions and Assessment.)

or denying his liability to be assessed under this Act, <sup>1</sup>[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], <sup>2</sup>[or] to make a fresh assessment under section 27, or <sup>3</sup>[objecting] to any order <sup>4\*</sup> \* under sub-section (2) of section 25 <sup>5</sup>[or section 25A] <sup>3</sup>[or sub-section (2) of section 26] or section 28 made by an Income-tax Officer <sup>3</sup>[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] <sup>3</sup>[or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 48, 49 or 49F, or to the amount of the refund allowed by the Income-tax Officer under any of those sections, and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub-section (1) of section 23A], may appeal to the <sup>6</sup>[Appellate Assistant Commissioner] against the assessment or against such refusal or order:

<sup>7</sup>[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.]

<sup>8</sup>[(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.]

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 9, for "or objecting to a refusal of an Income-tax Officer to register a firm under section 26A".

<sup>2</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 12.

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 36.

<sup>4</sup> The words "against him" rep. by s. 36, *ibid.*

<sup>5</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 4.

<sup>6</sup> Subs. by Act 7 of 1939, s. 36, for "Assistant Commissioner".

<sup>7</sup> Subs. by s. 36, *ibid.*, for the original proviso.

<sup>8</sup> Ins. by Act 11 of 1944, s. 9.

## (Chapter IV.—Deductions and Assessment.)

(2) The appeal, shall ordinarily be presented within thirty days <sup>1</sup>[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 <sup>2</sup>[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] <sup>3</sup>[or of the intimation of the refusal <sup>4</sup>[to pass an order under sub-section (r) 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, <sup>5</sup>[or of the intimation of an order under sub-section (r) of section 23A or under section 48, 49 or 49F], as the case may be ; but the <sup>6</sup>[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.

Hearing of  
appeal.

31. (1) The <sup>7</sup>[Appellate Assistant Commissioner] shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

(2) The <sup>7</sup>[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.

<sup>8</sup>[(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 <sup>7</sup>[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 <sup>7</sup>[Appellate Assistant Commissioner] may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment <sup>10</sup>[and determine where necessary the amount of tax payable on the basis of such fresh assessment.

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 9.

<sup>2</sup> Ins. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 15.

<sup>3</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 12.

<sup>4</sup> Ins. by the Repealing and Amending Act, 1937 (20 of 1937), s. 2 and Sch. I.

<sup>5</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 36.

<sup>6</sup> Subs. by Act 7 of 1939, s. 36, for "Assistant Commissioner".

<sup>7</sup> Subs. by Act 7 of 1939, s. 37, for "Assistant Commissioner".

<sup>8</sup> Ins. by s. 37, *ibid.*

<sup>9</sup> Certain words, ins. by s. 37, *ibid.*, were rep. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 16.

<sup>10</sup> Added by Act 7 of 1939, s. 37.

## (Chapter IV.—Deductions and Assessment.)

- <sup>1</sup>[<sup>2</sup>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] <sup>3</sup>[or] to make a fresh assessment under section 27 ;
- (c) confirm such order, or cancel it and direct the Income-tax Officer <sup>4</sup>[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 <sup>5</sup>[section 25 or sub-section (r) of section 23A, or sub-section (2) of section 26 or section 48, 49 or 49F] ;
- <sup>6</sup>[(d)] confirm, cancel or vary such order ;
- <sup>7</sup>[or, in the case of an order under sub-section (r) of section 25A ;
- (e) confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 25A ;
- or, in the case of an order under section 28 or sub-section (6) of section 44E or sub-section (5) of section 44F or sub-section (r) 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] ;
- <sup>8</sup>[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 <sup>9</sup>[Appellate Assistant Commissioner] shall not enhance an assessment <sup>7</sup>[or a penalty] unless the appellant has had a reasonable opportunity of showing cause against such enhancement:

<sup>10</sup>[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.]

<sup>11</sup>[(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 asso-

<sup>1</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 5.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 10, for " or, in the case of an order refusing to register a firm under section 26A " ; the words in italics were inserted by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933).

<sup>3</sup> The word " or " was ins. by Act 18 of 1933, s. 13.

<sup>4</sup> Subs. by Act 18 of 1933, s. 13, for " to make a fresh assessment ".

<sup>5</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 37, for " section 25 or section 28 ".

<sup>6</sup> Cl. (c) was relettered (d) by Act 22 of 1930, s. 5.

<sup>7</sup> Ins. by Act 7 of 1939, s. 37.

<sup>8</sup> Ins. by Act 11 of 1944, s. 10.

<sup>9</sup> Subs. by Act 7 of 1939, s. 37, for " Assistant Commissioner ".

<sup>10</sup> Added by Act 7 of 1939, s. 37.

<sup>11</sup> Added by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 16.

## (Chapter IV.—Deductions and Assessment.)

ciation of persons is ordered to be made, the Appellate Assistant Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

(5) The Appellate Assistant Commissioner shall, on the conclusion of the appeal, communicate the orders passed by him to the assessee and to the Commissioner.]

32. [Appeals against orders of Appellate Assistant Commissioner.] *Rep. by the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), s. 87.*

Appeals  
against  
orders of  
Appellate  
Assistant  
Commissioner.

<sup>1</sup>[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 <sup>2</sup>[on which such order is communicated to him.]

(2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made <sup>3</sup>[within sixty days of the date on which the order is communicated to the Commissioner by the Appellate Assistant Commissioner].

<sup>4</sup>[(2a) The Tribunal may admit an appeal after the expiry of the sixty days referred to in sub-sections (1) and (2) if it is satisfied that there was sufficient cause for not presenting it within that period.]

(3) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner, and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of one hundred rupees.

(4) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner.

<sup>5</sup>[(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.]

<sup>6</sup>[(6) Save as provided in section 66, orders passed by the Appellate Tribunal on appeal shall be final.]

Power of  
revision by  
Commissioner.

<sup>7</sup>[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

<sup>1</sup> Sub-sections (1), (2), (3), (4) and (6) of s. 33 were subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 88, for the original section.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 17, for "on which he is served with notice of such order".

<sup>3</sup> Subs. by s. 17, *ibid.*, for "at any time before the expiry of sixty days from the date of the order".

<sup>4</sup> Sub-section (2a) was ins. by s. 17, *ibid.*

<sup>5</sup> Sub-section (5) was ins. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 11.

<sup>6</sup> Sub-section (5) was renumbered (6) by s. 11, *ibid.*

<sup>7</sup> S. 33A was ins. by Act 23 of 1941, s. 18. The former s. 33A, which had been ins. by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 7, with effect from 1st April, 1930, was rep. by Act 7 of 1939, s. 40.

## (Chapter IV.—Deductions and Assessment.)

authority subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section if—

- (a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal, the time within which such appeal may be made has not expired ; or
- (b) the order is pending on an appeal before the Appellate Assistant Commissioner or has been made the subject of an appeal to the Appellate Tribunal ; or
- (c) the order has been made more than one year previously.

(2) The Commissioner may, on application by an assessee for revision of an order under this Act passed by any authority subordinate to the Commissioner, made within one year from the date of the order, call for the record of the proceeding in which such order was passed, and on receipt of the record may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section if—

- (a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made, the time within which such appeal may be made has not expired, or, in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal ; or
- (b) where an appeal against the order has been made to the Appellate Assistant Commissioner, the appeal is pending before the Appellate Assistant Commissioner ; or
- (c) the order has been made the subject of an appeal to the Appellate Tribunal:]

Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(3) Every application by an assessee under sub-section (2) shall be accompanied by a fee of twenty-five rupees.] 3373

34. <sup>1</sup>[(r)] If <sup>2</sup>[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 <sup>3</sup>[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, <sup>4</sup>[in any case in which he has reason to believe that the assessee has

Income escap-  
ing assess-  
ment.

<sup>1</sup> Original s. 34 was renumbered as sub-section (r) of that section by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 41.

<sup>2</sup> Subs. by s. 41, *ibid.*, for "for any reason".

<sup>3</sup> Subs. by s. 41, *ibid.*, for "has escaped assessment in any year, or has been assessed at too low a rate".

<sup>4</sup> Subs. by s. 41, *ibid.*, for "at any time within one year".

## (Chapter IV.—Deductions and Assessment.)

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:

<sup>1</sup>[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, 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 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.]

VII of 1939

<sup>1</sup>[(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:]

<sup>2</sup>[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.]

Rectification  
of mistake.

35. (1) <sup>3</sup>[The Commissioner or <sup>4</sup>[Appellate Assistant Commissioner] may, at any time <sup>5</sup>[within four years] from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under <sup>6</sup>[section 33A] and] the Income-tax Officer may, at any time, <sup>5</sup>[within four years] from the date of any <sup>7</sup>[assessment order, <sup>8</sup>[or refund order] passed by him] on his own motion rectify any mistake apparent from the record <sup>9</sup>[of the appeal, revision, <sup>10</sup>[assessment or refund] as the case may be], and

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 41.

<sup>2</sup> Added by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 19.

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), s. 6, with effect from 1st April, 1928.

<sup>4</sup> Subs. by Act 7 of 1939, s. 42, for "Assistant Commissioner".

<sup>5</sup> Subs. by s. 42, *ibid.*, for "within one year".

<sup>6</sup> Subs. by Act 23 of 1941, s. 20, for "section 33".

<sup>7</sup> Subs. by Act 7 of 1939, s. 42, for, "demand made upon an assessee".

<sup>8</sup> Ins. by the Income-tax Law (Amendment) Act, 1940 (12 of 1940), s. 3.

<sup>9</sup> Subs. by Act 3 of 1928, s. 6, for "of the assessment", with effect from 1st April, 1928.

<sup>10</sup> Subs. by Act 12 of 1940, s. 3, for "or assessment".

## (Chapter IV.—Deductions and Assessment.)

shall within the like period rectify any such mistake which has been <sup>1</sup>[brought to his notice by an assessee]:

Provided that no such rectification shall be made, having the effect of enhancing an assessment <sup>2</sup>[or reducing a refund] unless <sup>3</sup>[the Commissioner, the <sup>4</sup>[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:

VII of 1939.

<sup>5</sup>[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.]

<sup>6</sup>[(2) The provisions of sub-section (1) apply also in like manner to the rectification of mistakes by the Appellate Tribunal.]

<sup>7</sup>[(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.

<sup>7</sup>[(4)] Where any such rectification has the effect of enhancing the assessment <sup>2</sup>[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, <sup>8</sup>[Appellate Assistant Commissioner], <sup>9</sup>[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 when trying a suit in respect of the following matters, namely:— Power to take evidence on oath, etc.

V of 1908.

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses, and any proceeding before an Income-tax Officer, <sup>8</sup>[Appellate Assistant Commissioner], <sup>10</sup>[Commissioner or Appellate Tribunal]

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 42, for "brought to his notice by the assessee". The words "the assessee" had been subs. by Act 3 of 1928, s. 6, for "such assessee", with effect from 1st April, 1928.

<sup>2</sup> Ins. by the Income-tax Law Amendment Act, 1940 (12 of 1940), s. 3.

<sup>3</sup> Subs. by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), s. 6, for "the Income-tax Officer", with effect from 1st April, 1928.

<sup>4</sup> Subs. by Act 7 of 1939, s. 42, for "Assistant Commissioner".

<sup>5</sup> Added by Act 7 of 1939, s. 42.

<sup>6</sup> Ins. by s. 89, *ibid.*

<sup>7</sup> Sub-sections (2) and (3) were renumbered (3) and (4) respectively by s. 89, *ibid.*

<sup>8</sup> Subs. by s. 43, *ibid.*, for "Assistant Commissioner".

<sup>9</sup> Subs. by s. 90, *ibid.*, for "and Commissioner".

<sup>10</sup> Subs. by s. 90, *ibid.*, for "or Commissioner".

(Chapter IV.—Deductions and Assessment. Chapter V.—Liability  
in Special Cases.)

under this Chapter shall be deemed to be a “judicial proceeding” within the meaning of sections 193 and 228 <sup>1</sup>[and for the purposes of section 196] of the Indian Penal Code.

XLV of 1860.

Power to  
call for  
information.

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

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses ;

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses ;

<sup>2</sup>[(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.]

<sup>3</sup>[(4) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the sale, exchange or transfer of a capital asset, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts.]

Power to  
inspect the  
register of  
members  
of any  
company.

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

## CHAPTER V.

### LIABILITY IN SPECIAL CASES.

<sup>4</sup>[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

<sup>1</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 6.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 44, for the former cl. (3) which had been ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 15.

<sup>3</sup> Added by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 11, with effect from 31st March, 1947.

<sup>4</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 21, for the original section, as amended by Act 7 of 1939, s. 45.

Guardians,  
trustees and  
agents.

## (Chapter V.—Liability in Special Cases.)

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 or gains, and all the provisions of this Act shall apply accordingly.]

41. <sup>1</sup>[(r)] In the case of income, profits or gains chargeable under this Act which <sup>2\*</sup> \* \* \* the Courts of Wards, the Administrators-General, the Official Trustees or <sup>3\*</sup> 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, <sup>4</sup>[or any trustee or trustees <sup>5</sup>[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), 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 <sup>6</sup>[or trustee, or trustees], in the like manner and to the same amount as it would be leviable upon and recoverable from <sup>7</sup>[the person on whose behalf such income, profits or gains are receivable], and all the provisions of this Act shall apply accordingly:

Courts of Wards, etc.

<sup>8</sup>[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 <sup>9</sup>[but, where such persons have no other personal income chargeable under this Act and none of them is an artificial juridical person,

<sup>1</sup> Original s. 41 was re-numbered sub-section (r) of that section by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 46.

<sup>2</sup> The words "are received by" rep. by s. 46, *ibid.*

<sup>3</sup> The word "by" rep. by s. 46, *ibid.*

<sup>4</sup> Ins. by s. 46, *ibid.*

<sup>5</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 22, for "appointed under a duly executed trust deed".

<sup>6</sup> Ins. by Act 7 of 1939, s. 46.

<sup>7</sup> Subs. by s. 46, *ibid.*, for "any person on whose behalf such income profits or gains are received".

<sup>8</sup> Added by s. 46, *ibid.*

<sup>9</sup> Ins. by the Indian Income-tax (Amendment) Act, 1946 (8 of 1946), s. 5, with effect from 4th May, 1946.

## (Chapter V.—Liability in Special Cases.)

as if such income, profits or gains or such part thereof were the total income of an association of persons] :

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part.]

<sup>1</sup>[(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.]

Income deemed  
to accrue or  
arise within  
British  
India.

42. (1) <sup>2</sup>[All income, profits or gains accruing or arising], whether directly or indirectly, through or from any business connection <sup>3</sup>[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], <sup>4</sup>[or through or from the sale, exchange or transfer of a capital asset in British India,] shall be deemed to be income accruing or arising within British India, and <sup>5</sup>[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 the purposes of this Act, the assessee in respect of such income-tax :

<sup>6</sup>[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 :

<sup>7</sup>[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

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 46.

<sup>2</sup> Subs. by Act 7 of 1939, s. 47, for " In the case of any person residing out of British India, all profits or gains accruing or arising to such person ".

<sup>3</sup> Subs. by s. 47, *ibid.*, for " or property in British India ".

<sup>4</sup> Ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 12, with effect from 31st March, 1947.

<sup>5</sup> Subs. by Act 7 of 1939, s. 47, for " shall be chargeable to income-tax in the name of the agent of any such person, and ".

<sup>6</sup> Subs. by s. 47, *ibid.*, for " Provided that ".

<sup>7</sup> Added by s. 47, *ibid.*

## (Chapter V.—Liability in Special Cases.)

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 <sup>1</sup>[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 <sup>4</sup>[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.

<sup>5</sup>[(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:

<sup>6</sup>[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 who 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:]

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 47.

<sup>2</sup> The words "and, not being a British subject or a firm or company constituted within His Majesty's Dominions or a branch thereof" rep. by s. 47, *ibid.*

<sup>3</sup> The words "or the Assistant Commissioner, as the case may be", rep. by Act 7 of 1939, s. 47.

<sup>4</sup> Subs. by s. 47, *ibid.*, for "between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident".

<sup>5</sup> Subs. by s. 47, *ibid.*, for the former sub-section (3) which had been ins. by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), s. 3, with effect from 1st April, 1928.

<sup>6</sup> Ins., *ibid.*, s. 48.

(Chapter V.—Liability in Special Cases. Chapter VA.—Special Provisions relating to certain classes of Shipping.)

Provided <sup>1</sup>[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.

<sup>2</sup>[*Explanation.*—A person, whether residing in or out of British India, who acquires, after the 28th day of February, 1947, whether by sale, exchange or transfer, a capital asset in British India from a person residing out of British India shall, for the purposes of charging to tax the capital gain arising from such sale, exchange or transfer, be deemed to have a business connection, within the meaning of this section, with such person residing out of British India.]

Liability in case of a discontinued firm or association.

<sup>3</sup>[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.]

<sup>4</sup>[CHAPTER VA.]

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING.

Liability to tax of occasional shipping.

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

Return of profits and gains.

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

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

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 48.

<sup>2</sup> Added by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 13, with effect from 31st March, 1947.

<sup>3</sup> Subs. by Act 7 of 1939, s. 49, for the original section.

<sup>4</sup> Chapter VA was ins. by the Indian Income-tax (Further Amendment) Act, 1923 (27 of 1923), s. 3.

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*Chapter VB.—Special Provisions relating to Avoidance of Liability to Income-tax and Super-tax.)*

to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

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

Adjustment.

44C. Nothing in this Chapter shall be deemed to prevent a principal from claiming <sup>1</sup>[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.]

## <sup>2</sup>[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.

Avoidance of income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad.

(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 moneys worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 50, for "in any year".

<sup>2</sup> Chapter VB was ins. by s. 51, *ibid.*

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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 *bonâ 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.

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(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—

Avoidance of tax by certain transactions in securities.

(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

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Liability to Income-tax and Super-tax.)

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 retransfer the securities ;

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(4) Sub-section (3) shall 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

(Chapter VB.—Special Provisions relating to Avoidance of Liability to Income-tax and Super-tax.)

or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

(2) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such securities) that such person has thereby avoided or would avoid more than ten per cent. of the amount of the income-tax or super-tax for any year which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income-tax or super-tax, then those securities shall be deemed to be securities to which sub-section (3) applies.

(3) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued :

Provided that, this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax, or that the provisions of section 44E have been applied in his case in respect of such income.

(4) If any person fails to furnish any statement or particulars required under this section, or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of the person's total income for the 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.]

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## (Chapter VI.—Recovery of Tax and Penalties.)

## CHAPTER VI.

## RECOVERY OF TAX AND PENALTIES:

Tax when payable.

45. Any amount specified as payable in a notice of demand <sup>1</sup>[<sup>2</sup>[under sub-section (3)] of section 23A or] under section 29 or an order under section 31 <sup>3</sup>\* \* \* \* 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 <sup>4</sup>\* \* \* \* the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of:

<sup>5</sup>[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.]

Mode and time of recovery.

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

<sup>6</sup>[(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,

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 8, with effect from 1st April, 1930.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 52, for "under sub-section (4)".

<sup>3</sup> The words and figures "or section 32" rep. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 23.

<sup>4</sup> The words, figures and letter "or under section 33A", ins. by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 8, with effect from 1st April, 1930, were rep. by Act 7 of 1939, s. 52.

<sup>5</sup> Added by s. 52, *ibid.*

<sup>6</sup> Ins. by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), s. 8, with effect from 1st April, 1928.

## (Chapter VI.—Recovery of Tax and Penalties.)

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.

<sup>1</sup>[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 <sup>2\*</sup> \* \* \* the powers which under the Code of Civil Procedure, 1908 a Civil Court has <sup>3\*</sup> \* \* \* for the purpose of the recovery of an amount due under a decree.]

V of 1908.

(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 <sup>4</sup>[Central Government], or as the <sup>5</sup>[Central Board of Revenue] directs.

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

(7) Save in accordance with the provisions of sub-section (1) of section 42, <sup>7</sup>[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 <sup>8</sup>[the financial year] in which any demand is made under this Act.

<sup>1</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 16.

<sup>2</sup> The words "in respect of the attachment and sale of debts due to the assessee" rep. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 24.

<sup>3</sup> The words "in respect of the attachment and sale of debts due to a judgment debtor" rep. by s. 24, *ibid.*

<sup>4</sup> Subs. by the A. O. 1937 for "G. of I."

<sup>5</sup> Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., for "Board of Inland Revenue".

<sup>6</sup> Subs. by the A. O. 1937 for the original sub-section.

<sup>7</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 53.

<sup>8</sup> Subs. by s. 53, *ibid.*, for "the year".

(Chapter VI.—Recovery of Tax and Penalties.  
Chapter VII.—Refunds.)

<sup>1</sup>[Provided that where the sum payable is allowed to be paid by instalments the period of one year herein referred to shall be reckoned from the date on which the last of such instalments was due.]

<sup>2</sup>[(8) For the purposes of this section, the expression "Collector" shall include a Collector in Pakistan and the Income-tax Officer may forward a certificate under sub-section (2) to a Collector in Pakistan through the Central Board of Revenue of Pakistan, if the assessee has property in the district of that Collector.

(9) Where a Collector in British India receives through the Central Board of Revenue of India a certificate under the signature of an Income-tax Officer in Pakistan, the Collector shall proceed to recover the amount specified therein in the manner in which he would proceed to recover the amount specified in a certificate received from an Income-tax Officer in British India, and shall remit any sum so recovered by him to the Income-tax Officer in Pakistan, after deducting his expenses in connection with the recovery proceedings.

(10) The provisions of sub-sections (8) and (9) shall remain in force only so long as there are in force similar provisions in this Act as in force as part of the law of Pakistan or under any other similar Act forming part of the law of Pakistan, for the recovery of tax by a Collector in Pakistan on receipt of a certificate from an Income-tax Officer in British India.]

Recovery of penalties.

47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28, <sup>3</sup>[sub-section (6) of section 44E, sub-section (5) of section 44F] or sub-section (1) of section 46, <sup>4</sup>[and any interest payable under the provisions of sub-section (4), (6), or (8) of section 18A] shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

## CHAPTER VII.

### REFUNDS.

Refunds.

<sup>5</sup>[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.

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 24.

<sup>2</sup> Added, with effect from 15th August 1947, by G. G. O. 31, dated 10th December, 1947, see Gazette of India, 1947, Extraordinary, p. 1330.

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 54.

<sup>4</sup> Ins. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 12.

<sup>5</sup> Subs. by Act 7 of 1939, s. 35, for the former section.

## (Chapter VII.—Refunds.)

(2) <sup>1</sup>[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, which he would not be entitled to claim but for the passing of that Act.]

VII of 1939.

48A. [General power to make refunds.] Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 18 ; rep. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 58.

49. (1) If any person who has paid <sup>2</sup>[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 <sup>2</sup>[by deduction or otherwise] United Kingdom income-tax <sup>3</sup>[for the corresponding year] in respect of the same part of his income and that the rate at which he was entitled to and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax <sup>4</sup>[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:

Relief in respect of United Kingdom income-tax.

<sup>2</sup>[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 ;

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 91, for " The Appellate Assistant Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision ".

<sup>2</sup> Ins. by Act 7 of 1939, s. 57.

<sup>3</sup> Subs. by s. 57, *ibid.*, for " for that year ".

<sup>4</sup> Ins. by the Indian Income-tax (Amendment) Act, 1934 (29 of 1934), s. 2.

## (Chapter VII.—Refunds.)

<sup>1</sup>[(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 super-tax 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 ;

<sup>2</sup>[(d) the expression "appropriate rate of United Kingdom income-tax" has the meaning assigned to that expression in section 27 of the Finance Act, 1920 as amended by the Finance Act, 1927.] 10 & 11  
Geo. 5,  
c. 18.

Relief in respect of Indian State and Dominion income-tax.

<sup>3</sup>[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 <sup>4</sup>[in one or more countries].

(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 <sup>5</sup>[(including the United Kingdom)] where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in British India which appears to the Central Board of Revenue to correspond to the relief which may be granted by this section.

Agreement for avoidance of double taxation in India and Pakistan.

<sup>6</sup>[49AA. The Central Government may enter into an agreement with Pakistan for the avoidance of double taxation of income, profits and gains under this Act and under the corresponding law in force in Pakistan, and may, by notification in the official Gazette, make such provision as may be necessary for implementing the agreement.]

Income-tax on company's dividend deemed

<sup>7</sup>[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

<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 57, for the original cl.

<sup>2</sup> Ins. by the Indian Income-tax (Amendment) Act, 1934 (29 of 1934), s. 2.

<sup>3</sup> Ss. 49A, 49B, 49C and 49D were ins. by Act 7 of 1939, s. 58.

<sup>4</sup> Ins. with effect from 15th August, 1947, by G. G. O. 31, dated 10th December, 1947, see Gazette of India, 1947, Extraordinary, p. 1330.

<sup>5</sup> Subs. with effect from 15th August, 1947, *ibid.*, for "other than the United Kingdom".

<sup>6</sup> S. 49AA was ins. with effect from 15th August, 1947, *ibid.*

<sup>7</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 25, for the former section.

## (Chapter VII.—Refunds.)

to income-tax in British India or elsewhere, <sup>1</sup>[such person shall, if the dividend is included in his total income, be deemed] in respect of such dividend himself to have paid income-tax (exclusive of super-tax) at the rate applicable to the <sup>2</sup>[total income of the company] for the financial year in which the dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company is liable to pay income-tax bears to the whole income of the company.]

<sup>3</sup>[49C. <sup>4</sup>(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.]

<sup>3</sup>[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.]

<sup>5</sup>[Explanation.—The expression “Indian income-tax” in this section means income-tax and super-tax charged in accordance with the provisions of this Act.]

<sup>1</sup> Subs. by the Indian Finance Act, 1948 (20 of 1948), s. 8, for “such person shall be deemed”.

<sup>2</sup> Subs. by s. 8, *ibid.*, for “total income of a company”.

<sup>3</sup> Sections 49C and 49D were ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 58.

<sup>4</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 26, for the former sub-section.

<sup>5</sup> Added by s. 27, *ibid.*

## (Chapter VII.—Refunds.)

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

<sup>1</sup>[49E.] Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, <sup>2</sup>[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.

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

<sup>3</sup>[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 <sup>4</sup>\* or 49, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

Limitation of claims for refund.

50. No claim to any refund of income-tax <sup>5</sup>[or super-tax] under this Chapter shall be allowed, unless it is made within <sup>6</sup>[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 :

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 the claim shall not be allowed unless it is made within one year <sup>VII of 1939.</sup> from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (II) of section 2 in which the income arose on which the tax was recovered, whichever period may expire later:]

<sup>7</sup>[Provided <sup>8</sup>[further] that a claim to refund under section 49 <sup>8</sup>[of tax paid prior to the commencement of the Indian Income-tax (Amendment) <sup>VII of 1939.</sup> Act, 1939] may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or an Assistant Commissioner of Income-tax specially empowered in this behalf by the Central Board of Revenue, that he had sufficient cause for not making the claim within such period.]

50A. [*Appeal against refusal of refund.*].—*Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 20 ; rep. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939) s. 62.*

<sup>1</sup> S. 49A, originally ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 19, was re-numbered 49E by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 59.

<sup>2</sup> Subs. by Act 7 of 1939, s. 59, for "Assistant Commissioner".

<sup>3</sup> S. 49B, originally ins. by Act 18 of 1933, s. 19, was renumbered 49F by Act 7 of 1939, s. 60.

<sup>4</sup> The word, figures and letter "or 48A" rep. by Act 7 of 1939, s. 60.

<sup>5</sup> Ins. by s. 61, *ibid.*

<sup>6</sup> Subs. by Act 7 of 1939, s. 61, for "the former words."

<sup>7</sup> Added by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 8.

<sup>8</sup> Ins. by Act 7 of 1939, s. 61.

## (Chapter VIII.—Offences and Penalties.)

## CHAPTER VIII.

## OFFENCES AND PENALTIES.

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 (g) of section 18 or by section 20 to be furnished ;
- (c) to furnish in due time any of the returns mentioned in <sup>1</sup>[section 19A], <sup>2</sup>[section 20A], section 21, <sup>3</sup>[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 ;

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

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 <sup>4</sup>[section 19A or] <sup>5</sup>[section 20A] <sup>6</sup>[or section 21] or] section 22 <sup>7</sup>[or sub-section (2) of section 26A] or sub-section (3) of section 30, <sup>8</sup>[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 <sup>10</sup>[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.

53. (1) A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the <sup>11</sup>[Inspecting Assistant Commissioner].

Prosecution to be at instance of Inspecting

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1926 (24 of 1926), s. 3, with effect from 1st April, 1926.

<sup>2</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 21.

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 63.

<sup>4</sup> Ins. by Act 24 of 1926, s. 4, with effect from 1st April, 1926.

<sup>5</sup> Ins. by Act 18 of 1933, s. 22.

<sup>6</sup> Ins. by Act 7 of 1939, s. 64.

<sup>7</sup> Ins. by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 9, with effect from 1st April, 1930.

<sup>8</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 28, for "or sub-section (2) of section 32".

<sup>9</sup> The words, brackets, figures and letters "or sub-section (2) of section 33A or sub-section (3) of section 50A" rep. by Act 7 of 1939, s. 64. The words "or sub-section (2) of section 33A" had been ins., with effect from 1st April, 1930, by Act 21 of 1930, s. 9; and the words "or sub-section (3) of section 50A" had been ins. by Act 18 of 1933, s. 22.

<sup>10</sup> Subs. by s. 64, *ibid.*, for "be deemed to have committed the offence described in section 177 of the Indian Penal Code".

<sup>11</sup> Subs. by Act 7 of 1939, s. 65, for "Assistant Commissioner".

## (Chapter VIII.—Offences and Penalties.)

<sup>1</sup>[(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, 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.

<sup>2</sup>\* \* <sup>3</sup>[(3)] Nothing in this section shall apply to the disclosure—

- (a) of any such particulars for the purposes of a prosecution under <sup>4</sup>\* \* the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act ; or
- (b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act ; or
- (c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand ; or
- <sup>5</sup>[(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)

<sup>1</sup> Subs. by s. 65, of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), for the original sub-section which read: "The Assistant Commissioner may stay any such proceeding or compound any such offence".

<sup>2</sup> The words "Provided that" rep. by s. 66, *ibid.*

<sup>3</sup> The proviso was numbered as sub-section (3) by s. 66, *ibid.*

<sup>4</sup> The words and figures "section 193 of" rep. by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 9.

<sup>5</sup> Cls. (d) to (g) ins. by Act 7 of 1939, s. 66.

## (Chapter VIII.—Offences and Penalties.)

XXXVII of  
1850.

Act, 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]

<sup>1</sup>[(*gg*) of any such particulars, relevant to any inquiry into a charge of mis-conduct 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], <sup>2</sup>[or]

II of 1899.

<sup>3</sup>[(*h*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document ; or]

<sup>4</sup>[(*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 <sup>5</sup>[or section 49AA] 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

VIII of 1878.

(*k*) of such facts, to any authority exercising powers under the Sea Customs Act, 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, <sup>6</sup>[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*) <sup>7</sup>[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.] *m* - (o)

\*\* \* \* <sup>8</sup>[(*4*)] Nothing in this section shall apply to the production

<sup>1</sup> Cl. (*gg*) ins. by the Income-tax Law Amendment Act, 1940 (12 of 1940), s. 4.

<sup>2</sup> Ins. by the Repealing and Amending Act, 1942 (25 of 1942), s. 3 and Sch. II.

<sup>3</sup> Cl. (*cc*), originally ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 23, was relettered (*h*) by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 66.

<sup>4</sup> Cls. (*i*) to (*m*) subs. for the original cl. (*d*) by s. 66, *ibid*.

<sup>5</sup> Ins., with effect from 15th August, 1947, by G. G. O. 31, dated 10th December, 1947, see Gazette of India, 1947, Extraordinary, p. 1330.

<sup>6</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 29, for "to a Returning Officer".

<sup>7</sup> Ins. by the Income-tax Law Amendment Act, 1940 (12 of 1940), s. 4.

<sup>8</sup> The words "Provided further that" rep. and the proviso, which had been ins. by the Indian Income-tax (Amendment) Act, 1930 (21 of 1930), s. 18, with effect from 1st April, 1930, was numbered as sub-section (*4*) by Act 7 of 1939, s. 66.

## (Chapter VIII.—Offences and Penalties. Chapter IX.—Super-tax.)

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 <sup>1</sup>[section 25A or] section 26A, or to the giving of evidence by a public servant in respect thereof.

<sup>2</sup>\* \* \* <sup>2</sup>[(5)] No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

## CHAPTER IX.

## SUPER-TAX.

Charge of  
super-tax.

55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any <sup>3</sup>[individual, Hindu undivided family, <sup>4</sup>[company, local authority, unregistered firm or other association of persons], not being a registered firm], <sup>5</sup>[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 <sup>6</sup>[Central Legislature]:

<sup>5</sup>[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 <sup>7</sup>[further] that, where the profits and gains of an unregistered firm <sup>7</sup>[or other association of persons not being a company] have been assessed to super-tax, super-tax shall not be payable by <sup>8</sup>[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.

Total income  
for purposes  
of super-  
tax.

56. <sup>9</sup>[Except in cases to which <sup>10</sup>[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 <sup>11</sup>[individual, Hindu undivided family, company, <sup>12</sup>[local authority], unregistered firm or other <sup>13</sup>[association of persons]] shall, for

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 66.

<sup>2</sup> The words "Provided further that" rep. and the proviso numbered as sub-section (5) by s. 66, *ibid.*

<sup>3</sup> Subs. by the Indian Income-tax (Amendment) Act, 1924 (11 of 1924), s. 7, with effect from 1st April, 1923, for "individual, unregistered firm, Hindu undivided family or company".

<sup>4</sup> Subs. by Act 7 of 1939, s. 67, for "company, unregistered firm or other Association of individuals".

<sup>5</sup> Ins. by s. 67, *ibid.*

<sup>6</sup> Subs. by the A. O. 1937 for "Indian Legislature".

<sup>7</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 67.

<sup>8</sup> Subs. by s. 67, *ibid.*, for "an individual having a share in the firm".

<sup>9</sup> Ins. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 13.

<sup>10</sup> Ins. by the Indian Income-tax (Amendment) Ordinance, 1945 (9 of 1945), s. 6, (for indefinite period).

<sup>11</sup> Subs. by the Indian Income-tax (Amendment) Act, 1924 (11 of 1924), s. 8, with effect from 1st April, 1923, for "individual, unregistered firm, Hindu undivided family or company".

<sup>12</sup> Ins. by Act 7 of 1939, s. 68.

<sup>13</sup> Subs. by s. 68, *ibid.*, for "association of individuals".

(Chapter IX.—Super-tax. Chapter IXA.—Special Provisions relating to certain classes of Provident Funds.)

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.

<sup>1\*</sup> \* \* \* \*

57. [Non-resident partners and shareholders.]—Rep. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 69.

58. (1) All the provisions of this Act, <sup>2</sup>[relating to the charge, assessment, collection and recovery of income-tax except those contained in] <sup>3</sup>section 3, <sup>4</sup>[the second proviso] to sub-section (1) of section 7, <sup>5</sup>[the second and third provisos to section 8], <sup>6</sup>[clauses (a) and (b) of sub-section (2) of section 14], and section 15, <sup>7\*</sup> <sup>8\*</sup> 19, <sup>9</sup>[and 20 and the first proviso to sub-section (1) of section 41 and section] <sup>10\*</sup> <sup>11</sup>[<sup>12\*</sup> 58F and <sup>13</sup>sub-section (2)] of section 58G] shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

Application of Act to super-tax.

<sup>14\*</sup> \* \* \* \*

(2) Save as provided in <sup>15</sup>[<sup>16</sup>sub-sections (2), (2a), (2b), (3b), (3c), (3d) and (3e)] of section 18], <sup>17\*</sup> <sup>18</sup>[and section 58H] super-tax shall be payable by the assessee direct.

#### <sup>19</sup>[CHAPTER IXA.

##### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS.

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

(a) a “ recognised provident fund ” means a provident fund which <sup>Definitions.</sup> has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter ;

<sup>1</sup> The proviso was rep. by the Indian Income-tax (Amendment) Act, 1928 (3 of 1928), s. 10, with effect from 1st April, 1928.

<sup>2</sup> Subs. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 25, for “ except ”.

<sup>3</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 70, for “ the proviso ”.

<sup>4</sup> Subs. by Act 18 of 1933, s. 25, for “ the provisos to section 8 ”.

<sup>5</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 30, for “ sub-section (2) of section 14 ”.

<sup>6</sup> Ins. by the Indian Income-tax (Amendment) Ordinance, 1945 (9 of 1945), for indefinite period.

<sup>7</sup> The figures “ 17 ” rep. by Act 7 of 1939, s. 70.

<sup>8</sup> The figures “ 18 ” rep. by Act 18 of 1933, s. 25.

<sup>9</sup> Subs. by Act 7 of 1939, s. 70, for “ 20 ”.

<sup>10</sup> The figures “ 21 ” rep. by s. 70, *ibid.*

<sup>11</sup> Subs. by Act 18 of 1933, s. 25, for “ and 48 ”.

<sup>12</sup> The figures “ 48 ” rep. by Act 7 of 1939, s. 70.

<sup>13</sup> Subs. by s. 70, *ibid.*, for “ sub-sections (2) and (3) ”.

<sup>14</sup> The proviso, ins. by the Indian Income-tax (Amendment) Act, 1926 (24 of 1926), s. 6, with effect from 1st April, 1926, was rep. by Act 18 of 1933, s. 25.

<sup>15</sup> Ins. by s. 25, *ibid.*

<sup>16</sup> Subs. by Act 7 of 1939, s. 70, for “ sub-sections (3a), (3b), (3c) and (3d) ”.

<sup>17</sup> The word and figures “ section 57 ” rep. by s. 70, *ibid.*

<sup>18</sup> Ins. by the Indian Income-tax (Provident Funds Relief) Act, 1929 (12 of 1929), s. 4, with effect from 15th March, 1930.

<sup>19</sup> Chapter IXA was ins. by s. 5, *ibid.*, with effect from 15th March, 1930.

(Chapter IXA.—Special Provisions relating to certain classes of Provident Funds.)

- (b) an " employer " means—
- (i) a Hindu undivided family, company, firm of other association of 1\* \* 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 2\* \* maintaining a provident fund for the benefit of his or its employees ;
- (c) an " employee " means an employee participating in a provident fund but does not include a personal or domestic servant ;
- (d) a " contribution " means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest ;
- (e) the " balance to the credit " of an employee means the total amount to the credit of his individual account in a provident fund at any time ;
- (f) the " annual accretion " to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest ;
- (g) the " accumulated balance due " to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund ; and
- (h) the " regulations of a fund " means the special body of regulations governing the constitution and administration of a particular provident fund.

The accord-  
ing and  
withdrawal  
of recogni-  
tion.

**58B.** (r) 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.

\* \* \* \* \*

<sup>3</sup>[(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.

<sup>3</sup>[(3)] An order withdrawing recognition shall take effect from the day on which it is made.

<sup>4</sup>[(3a)] An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the

<sup>1</sup> The words " individuals or " rep. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 71.

<sup>2</sup> The words and figures " or section 11 " rep. by s. 71, *ibid.*

<sup>3</sup> Sub-section (2) rep. and sub-sections (3), (4) and (5) renumbered (2), (3) and (4) respectively by s. 72, *ibid.*

<sup>4</sup> Ins. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 9.

(Chapter IXA.—Special Provisions relating to certain classes of Provident Funds.)

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.]

<sup>1</sup>[(4)] An employer objecting to an order of the Commissioner refusing to recognise <sup>2</sup>[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 <sup>3</sup>[Central Government] may, by rule, prescribe—

Conditions to be satisfied by a recognised provident fund.

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

<sup>4</sup>[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 :

<sup>5</sup>[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, or the National Service (Technical Personnel) Ordinance, 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

<sup>1</sup> Re-numbered by s. 72 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), for sub-section 5.

<sup>2</sup> Ins. by Act 7 of 1939, s. 72.

<sup>3</sup> Subs. by the A. O. 1937 for "G. G. in C."

<sup>4</sup> Added by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 10.

<sup>5</sup> Added by s. 10, *ibid.*, with effect from 3rd September, 1939.

## (Chapter IXA.—Special Provisions relating to certain classes of Provident Funds.)

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 <sup>1</sup>[and of donations, if any, received <sup>2</sup>[by the trustees] ], of accumulations thereof, and of interest (simple and compound), credited in respect of such <sup>3</sup>[contributions, donations and accumulations], and of securities purchased therewith, <sup>4</sup>[and of any capital gains arising from the sale, exchange or transfer of capital assets of the fund,] and of no other sums:
- (e) The fund shall be vested in two or more trustees <sup>5</sup>[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 <sup>6</sup>[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 <sup>6</sup>[Central Government] may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 58C—

- (a) so as to permit the payment of large contributions by an employer

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

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 10.

<sup>2</sup> Subs. by the Indian Income-tax (Amendment) Act, 1941 (23 of 1941), s. 31, for "from the trustees".

<sup>3</sup> Subs. by Act 40 of 1940, s. 10, for "contributions and accumulations".

<sup>4</sup> Ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 14, with effect from 31st March, 1947.

<sup>5</sup> Ins. by the Indian Income-tax (Amendment) Act, 1931 (4 of 1931), s. 2.

<sup>6</sup> Subs. by the A. O. 1937 for "G. G. in C".

*(Chapter IXA.—Special Provisions relating to certain classes of Provident Funds.)*

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.

Annual accretion deemed to be income received.

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 <sup>1</sup>[or six thousand rupees, whichever is less.]

Exemption of annual accretion from income-tax.

(2) <sup>2</sup>[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 <sup>3</sup>[Central Government] may, by notification in the <sup>4</sup>[Official Gazette], fix in this behalf.

58G. <sup>5</sup>[(1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax except to the extent of an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under section 58E up to the first day of April, 1933, if the Indian Income-tax (Second Amendment) Act, 1933, had come into force on the 15th March, 1930.]

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

<sup>5</sup>[(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

<sup>1</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 73.

<sup>2</sup> Subs. by s. 73. *ibid.*, for the former words.

<sup>3</sup> Subs. by the A. O. 1937 for "G. G. in C."

<sup>4</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>5</sup> Sub-section (1) was ins. and the former sub-section (1) was renumbered (2) by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 26.

<sup>6</sup> The words "and super-tax" rep. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 26.

(Chapter IXA.—Special Provisions relating to certain classes of Provident Funds.)

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.

<sup>1</sup>[(3)] Where exemption from payment of income-tax is not allowed under the provisions of <sup>2</sup>[sub-section (2)], the Income-tax Officer shall calculate the total of the various sums of income-tax <sup>3</sup>[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.

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

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

Accounts of recognised provident funds.

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

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

Treatment of balances in newly recognised provident funds.

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

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

Any portion of the balance to the credit of an employee in the existing

<sup>1</sup> The former sub-section (2) was renumbered (3) by the Indian Income-tax (Amendment) Act, 1933 (18 of 1933), s. 26.

<sup>2</sup> Subs. by s. 26, *ibid.*, for "sub-section (1)".

<sup>3</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 74 for the former words.

<sup>4</sup> Subs. by the Repealing and Amending Act, 1934 (24 of 1934), s. 2 and Sch. I, for "sub-section (2)".

(Chapter IXA.—Special Provisions relating to certain classes of Provident Funds.)

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.

Treatment of fund transferred by employer to trustee.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, <sup>1</sup>[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 <sup>2</sup>[clause (xi)] of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 75.

<sup>2</sup> Subs. by s. 75, *ibid.*, for " clause (ix) ".

(Chapter IXA.—Special Provisions relating to certain classes of Provident Funds. Chapter IXB.—Special Provisions relating to certain classes of Superannuation Funds.)

Provisions relating to rules.

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

(2) In addition to any power conferred by this Chapter, the <sup>1</sup>[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 <sup>2</sup>[it] may deem requisite.

Application of this Chapter.

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

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### <sup>3</sup>[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.

<sup>1</sup> Subs. by the A. O. 1937 for " G. G. in C. ".

<sup>2</sup> Subs. by the A. O. 1937 for " he ".

<sup>3</sup> Chapter IXB was ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 76.

(Chapter IXB.—Special Provisions relating to certain classes of Superannuation Funds.)

**58O.** (1) The Central Board of Revenue may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 58P, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval. Approval and withdrawal of 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 Application for approval.

(Chapter IXB.—Special Provisions relating to certain classes of  
Superannuation Funds.)

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.

Exemption  
of super-  
annuation  
fund from  
income-tax.

**58R.** Income derived from investments or deposits of an approved superannuation fund <sup>1</sup>[and any capital gains arising from the sale, exchange or transfer of capital assets of such fund] shall be exempt from payment of income-tax, and any sum paid by an employer 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 the 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.

Treatment  
of repaid  
contribu-  
tions.

**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 <sup>2</sup>\* \* to be income of the employee for that year.

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax <sup>2</sup>\* \* 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.

Deduction  
from pay of,  
and contribu-

**58T.** Where an employer deducts from the emoluments paid to an

<sup>1</sup> Ins. by the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (22 of 1947), s. 15, with effect from 31st March, 1947.

<sup>2</sup> The words "and super-tax" rep. by the Income-tax Law Amendment Act, 1940 (12 of 1940), s. 5.

(Chapter IXB.—Special Provisions relating to certain classes of Superannuation Funds. Chapter X.—Miscellaneous.)

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.

tions 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 <sup>1</sup>[Central Board of Revenue] may, subject to the control of the <sup>2</sup>[Central Government], make rules <sup>3</sup>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.

Power to make rules.

<sup>1</sup> Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., for "Board of Inland Revenue".

<sup>2</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>3</sup> For such rules, see Gen. R. & O., Vol. V, p. 50.

## (Chapter X.—Miscellaneous.)

(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 ;

1\* \* \* \* \*

<sup>1</sup>[(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 or under section 49 of this Act ;

10 & 11  
Geo. 5,  
c. 18.

(d) prescribe the year which, for the purpose of relief under section 49, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920 ; and

10 & 11  
Geo. 5,  
c. 18.

(e) provide for any matter which by this Act is to be prescribed.

<sup>2</sup>[(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.]

<sup>3</sup>[(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.

<sup>3</sup>[(5)] Rules made under this section shall be published in the <sup>4</sup>[official Gazette], and shall thereupon have effect as if enacted in this Act.

60. <sup>5</sup>[(1)] The <sup>6</sup>[Central Government] may, by notification<sup>7</sup> in the <sup>4</sup>[Official Gazette], make an exemption, reduction in rate or other modifi-

<sup>1</sup> Original sub-cl. (ii) was rep. and sub-cl. (iii) was renumbered (ii) by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 77.

<sup>2</sup> Sub-section (3) was ins. by the Indian Income-tax (Amendment) Act, 1927 (28 of 1927), s. 2.

<sup>3</sup> The original sub-sections (3) and (4) were renumbered (4) and (5) respectively by s. 2, *ibid.*

<sup>4</sup> Subs. by the A. O. 1937 for "Gazette of India".

<sup>5</sup> The original s. 60 was renumbered as sub-section (1) of that section by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 10.

<sup>6</sup> Subs. by the A. O. 1937 for "G. G. in C.".

<sup>7</sup> For such notifications, see Gen. R. & O. Vol. V, pp. 80-86.

## (Chapter X.—Miscellaneous.)

cation, 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.

<sup>1</sup>[(2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, <sup>2</sup>[or by reason of his having received in any one financial year salary for more than twelve months], <sup>3</sup>[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 <sup>4</sup>[Central Government] may grant <sup>5</sup>[the appropriate relief.]]

<sup>6</sup>[(3) After the commencement of the Indian Income-tax (Amendment) Act, 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.]

<sup>7</sup>[61. (1) Any assessee, who is entitled or required to attend before <sup>8</sup>[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).

(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 ;

<sup>1</sup> Added by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 10.

<sup>2</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 27.

<sup>3</sup> Ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 78.

<sup>4</sup> Subs. by the A. O. 1937 for "G. G. in C."

<sup>5</sup> Subs. by s. 78, *ibid.*, for "such relief as it may think fit". The word "it" had been subs. by the A. O. 1937 for "he".

<sup>6</sup> Added by Act 7 of 1939, s. 78.

<sup>7</sup> Subs. by s. 79, *ibid.*, for the original section.

<sup>8</sup> Ins. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 11.

## (Chapter X.—Miscellaneous.)

- (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, where 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.

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

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or <sup>1</sup>[to the] manager, or any adult male member of the family <sup>2</sup>[and, in the case of any other <sup>3</sup>[association of persons] be addressed to the principal officer thereof].

64. (1) Where an assessee carries on <sup>4</sup>[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 <sup>4</sup>[business, profession or vocation] is carried on in more places than one, by the Income-tax Officer of the area in which <sup>5</sup>[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.

<sup>1</sup> Subs. by the Repealing and Amending Act, 1924 (7 of 1924), s. 2 and Sch. I, for "on the".

<sup>2</sup> Added by the Indian Income-tax (Amendment) Act, 1924 (11 of 1924), s. 9.

<sup>3</sup> Subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 80, for "association of individuals".

<sup>4</sup> Subs. by s. 81, *ibid.*, for "business".

<sup>5</sup> Subs. by s. 81, *ibid.*, for "his principal place of business".

Receipts to be given.

Service of notices..

Place of assessment.

V of 1908.

## (Chapter X.—Miscellaneous.)

(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 <sup>1</sup>[Central Board of Revenue]:

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

<sup>2</sup>[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.

<sup>3</sup>[(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) where by <sup>4</sup>[any direction given or] any distribution or allocation of work made by the Commissioner of Income-tax under sub-section (5) of section 5, <sup>4</sup>[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 mak-

<sup>1</sup> Subs. by the Central Board of Revenue Act, 1924 (4 of 1924), s. 4 and Sch., for "Board of Inland Revenue".

<sup>2</sup> Added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 81.

<sup>3</sup> Added by the Income-tax Law Amendment Act, 1940 (12 of 1940), s. 6.

<sup>4</sup> Ins. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 12.

## (Chapter X.—Miscellaneous.)

ing 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.]

Indemnity.

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

Statement of  
case by  
Appellate  
Tribunal to  
High Court.

66. <sup>1</sup>[(1) Within sixty days of the date upon which he is served with notice of an order under sub-section (4) of section 33, the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court:

Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives 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

<sup>1</sup> Sub-section (1) to (5) were subs. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 92, for the former sub-sections (1), (2), (3), (3A), (4) and (5).

## (Chapter X.—Miscellaneous.)

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, <sup>1</sup>\* \* \* 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 <sup>2</sup>[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.]

IX of 1908.

<sup>3</sup>[(7a) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee <sup>4</sup>[under sub-section (2) or sub-section (3)].]

<sup>5</sup>[(8) For the purposes of this section " the High Court " means—

<sup>6</sup>\* \* \* \* \*

(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.]

V of 1908.

<sup>7</sup>[66A. (1) When any case has been referred to the High Court under section 66, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

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

\* \* \* \* \*

(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

<sup>1</sup> The words " on the application of an assessee " rep. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 92.

<sup>2</sup> Added by s. 82, *ibid.*

<sup>3</sup> Ins. by the Indian Income-tax (Second Amendment) Act, 1933 (18 of 1933), s. 28.

<sup>4</sup> Subs. by Act 7 of 1939, s. 92, for " under sub-section (3) or sub-section (3A) "

<sup>5</sup> Added by the Indian Income-tax (Amendment) Act, 1926 (24 of 1926), s. 7, with effect from 1st April, 1926.

<sup>6</sup> Cl. (a) was rep., with effect from 15th August, 1947, by G. G. O. 31, dated 10th December, 1947, *see* Gazette of India, 1947, Extraordinary, p. 1330.

<sup>7</sup> S. 66A was ins. by the Indian Income-tax (Amendment) Act, 1926 (24 of 1926), s. 8, with effect from 1st April, 1926.

<sup>8</sup> The proviso, ins. by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 83, was rep., with effect from 15th August, 1947, by G. G. O. 31, dated 10th December, 1947, *see* Gazette of India, 1947, Extraordinary, p. 1330.

## (Chapter X.—Miscellaneous.)

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

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

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

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

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

(5) Nothing in this section shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever; or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.]

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 <sup>1</sup>[officer of the Crown] for anything in good faith done or intended to be done under this Act.

<sup>2</sup>[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.]

<sup>3</sup>[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.]

68. [Repeals.] *Rep. by the Repealing Act, 1927 (XII of 1927), s. 2 and Sch.*

<sup>1</sup> Subs. by the A. O. 1937 for "Govt. Officer".

<sup>2</sup> S. 67A was ins. by the Indian Income-tax (Second Amendment) Act, 1930 (22 of 1930), s. 12.

<sup>3</sup> S. 67B was ins. by the Income-tax Law Amendment Act, 1940 (12 of 1940), s. 7.

Bar of suits in Civil Court.

Computation of periods of limitation.

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

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

<sup>1</sup>[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 <sup>2</sup>[arrived at by adjusting the surplus or deficit] disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, \* \* \* so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 10 of this Act be allowed for in computing the profits and gains of a

business, whichever is the greater :

Provided that the amount to be allowed as management expenses shall not exceed—

(a)  $7\frac{1}{2}$  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 <sup>4</sup>[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*

<sup>5</sup>[(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 :

<sup>1</sup> The Sch. was added by the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), s. 84.

<sup>2</sup> Ins. by the Income-tax Law Amendment Act, 1940 (12 of 1940), s. 8.

<sup>3</sup> The words " after adjusting such surplus " rep. by s. 8, *ibid.*

<sup>4</sup> Subs. by the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), s. 14, for " received ".

<sup>5</sup> Cls. (c) and (d) were subs. by s. 14, *ibid.*, for the former cl. (c).

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

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 inter-valuation period:

Provided further that if any amount so reserved for policy-holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders one-half of such amount, if 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 ;

<sup>1</sup>[(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, imme- IV of 1938.

<sup>1</sup> Subs. by s. 14, of the Indian Income-tax (Amendment) Act, 1944 (11 of 1944), for the former cl. (c).

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

IV of 1938.

diately preceding the year for which the assessment is to be made or until the commencement of the Insurance Act, 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 <sup>1</sup>[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 <sup>1</sup>[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 ;

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- (iv) ' life insurance business ' means life insurance business as defined in clause (IX) of section 2 of the Insurance Act 1938 ;

- (v) ' securities ' includes stocks and shares.

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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, 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

<sup>1</sup> Ins. by the Indian Income-tax (Amendment) Act, 1944 (II of 1944), s. 14.

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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 <sup>1</sup>[by a mutual insurance association].]

THE RANCHI MENTAL HOSPITAL ACT, 1922.

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<sup>1</sup> Subs. by the Indian Income-tax (Amendment) Act, 1940 (40 of 1940), s. 13, for "by a mutual insurance company".